Supreme Court, U.S.
FILED
DEC 23 1999
CLERK

No. 99-409

IN THE

Supreme Court of the United States

HARTFORD UNDERWRITERS INSURANCE COMPANY,

Petitioner,

v.

UNION PLANTERS BANK, N.A.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

ROBERT H. BROWNLEE
Counsel of Record
DAVID D. FARRELL
THOMPSON COBURN LLP
Attorneys for Respondent
One Mercantile Center
Suite 3500
St. Louis, Missouri 63101
(314) 552-6000

G. ERIC BRUNSTAD, JR.
Counsel of Record
PATRICK J. TROSTLE
RENEE M. DAILEY
MARK W. DEVENO
HELDER P. PEREIRA
WILLIAM H. ERICKSON
NICOLE J. ANKER
BINGHAM DANA LLP
Attorneys for Petitioner
One State Street
Hartford, Connecticut 06103
(860) 240-2700

PETITION FOR CERTIORARI FILED SEPTEMBER 3, 1999
CERTIORARI GRANTED NOVEMBER 8, 1999

340 pp

TABLE OF APPENDICES

	Page
Relevant Docket Entries	1a
Emergency Motion For Relief From Automatic Stay Or, In The Alternative, For Adequate Protection, And For Order Denying Use Of Cash Collateral, And Requiring Segregation And Accounting Of Cash Collateral Dated September 6, 1991	13a
Emergency Motion For Order Authorizing Debtor To Obtain Post-petition Financing Pursuant To 11 U.S.C. § 364, To Utilize Cash Collateral Pursuant To 11 U.S.C. § 363, And Granting Adequate Protection To Pre-Petition Secured Party Dated September 7, 1991	36a
Emergency Order Of The United States Bankruptcy Court For The Eastern District Of Missouri, Eastern Division Authorizing Debtor To Obtain Post-petition Secured Credit, Granting Senior Liens And Administrative Priority Expense, Modifying Automatic Stay, Providing Adequate Protection And Authorizing Agreements With Landmark Bank Of Illinois Dated September 6, 1991	145a
Final Order Of The United States Bankruptcy Court For The Eastern District Of Missouri, Eastern Division Authorizing Debtor To Obtain Post-Petition Secured Credit, Granting Senior Liens And Administrative Priority Expense, Modifying Automatic Stay, Providing Adequate Protection, And Authorizing Agreements With Landmark Bank Of Illinois Dated October 25, 1991	178a

Appendices

Page

Application For Allowance Of Administrative Expense, Pursuant To 11 U.S.C. § 503 And Charge Against Collateral, Pursuant To 11 U.S.C. § 506(c) Dated August 2, 1993 ..... 207a

Objection Of Magna Bank Of Illinois To Hartford Underwriters Insurance Company Application For Allowance Of Administrative Expense Pursuant To 11 U.S.C. § 503 And Charge Against Collateral Pursuant To 11 U.S.C. § 506(c) Dated And Filed August 20, 1993 ..... 212a

Trial Stipulation Of Facts Dated And Filed April 5, 1994 ..... 215a

Transcript Of Hearing Of The United States Bankruptcy Court For The Eastern District Of Missouri, Eastern Division Before The Honorable David P. McDonald Dated April 5, 1994 ..... 219a

Memorandum Opinion And Order Of The United States Bankruptcy Court For The Eastern District Of Missouri, Eastern Division Dated August 14, 1996 ..... 249a

Notice Of Appeal To The United States Bankruptcy Court For The Eastern District Of Missouri, Eastern Division Dated And Filed August 23, 1996 ..... 264a

Appendices

Page

Stipulation With Respect To Bankruptcy Court Order From Which Appeal Has Been Taken 267a

Memorandum Of The United States District Court For The Eastern District Of Missouri, Eastern Division Dated September 10, 1997 ..... 270a

Notice Of Appeal To The United States Court Of Appeals For The Eighth Circuit Dated And Filed October 9, 1997 ..... 283a

Opinion Of The United States Court Of Appeals For The Eighth Circuit Dated And Filed July 27, 1998 ..... 286a

Opinion Of The United States Court Of Appeals For The Eighth Circuit Dated And Filed June 7, 1999 ..... 297a

Relevant Statutes 317a

RELEVANT DOCKET ENTRIES

U.S. District Court
Eastern District of Missouri (Eastern)

CIVIL DOCKET FOR CASE #: 96-CV-1991

Magna Bank of IL, et al v. Hartford Underwriter
Filed: 10/04/96
Assigned to: Honorable Charles A. Shaw
Demand: $0,000
Nature of Suit: 422
Lead Docket: None
Jurisdiction: Federal Question
Dkt # in USBC: is 91-45623-293

Cause: 28:0158 Notice of Appeal re Bankruptcy Matter (BAP)

HEN HOUSE INTERSTATE, INC.
debtor

David A. Warfield
314-421-0239 fax
[COR LD NTC]
HUSCH AND EPPENBERGER
100 N. Broadway
Suite 1300
St. Louis, MO 63102-2706
314-421-4800
FTS 421-0239

Relevant Docket Entries

MAGNA BANK OF ILLINOIS
appellant

Robert H. Brownlee
314-552-7017 fax
[COR LD NTC]
David D. Farrell
314-552-7144 fax
[COR LD NTC]
THOMPSON COBURN
One Mercantile Center
St. Louis, MO 63101
314-552-6000
FTS 552-7117

v.

HARTFORD UNDERWRITERS INSURANCE COMPANY, THE
appellee

Wendi S. Alper-Pressman
314-725-7288 fax
[COR LD NTC]
SUSMAN AND SCHERMER
7711 Carondelet Avenue
Suite 1000
Clayton, MO 63105-3388
314-725-7300
FTS 725-7288

Relevant Docket Entries

Vincent D. Vogler
314-567-5053 fax
[COR LD NTC]
VOGLER AND ASSOCIATES
11330 Olive Street Road
Suite 200, P.O. Box 419037
St. Louis, MO 63141-9037
314-567-7970
FTS 567-5053

PETER LUMAGHI
trustee

Peter Lumaghi
314-539-2990 fax
[COR LD NTC]
U.S. DEPARTMENT OF JUSTICE
Office of Trustee
815 Olive Street
Room 412
St. Louis, MO 63101
314-539-2976
FTS 539-2990

Dana McWay
314-425-4063 fax
[COR LD NTC]
U.S. BANKRUPTCY COURT
211 N. Broadway
Seventh Floor
St. Louis, MO 63102
314-425-4222
FTS 425-4753

Relevant Docket Entries

10/4/96 1 BANKRUPTCY RECORD ON APPEAL; Appellant's brief ddl 10/21/96 (aeh) [Entry date 10/04/96]

10/4/96 2 TRACK INFORMATION STATEMENT filed by USBC; track 4 preferred (aeh) [Entry date 10/04/96]

10/4/96 — REMARK original transcripts received from USBC on hearing dates 4/5/94 and 1/13/94 (aeh) [Entry date 10/04/96]

10/4/96 3 CASE MANAGEMENT ORDER; administrative(4) track appeallant shall serve and file a brief within fifteen (15) days of the docketing of the appeal, appellee shall serve and file a brief within fifteen (15) days and appellant may serve and file a reply brief within then (10) days (cc: all counsel) (aeh) [Entry date 10/04/96]

10/15/96 4 MOTION by appellant Magna Bank of IL to extend to 11/18/96 to fle brief pursuant to Rule 8009 of the Fed Rules of Bankruptcy Procedure (set) [Entry date 10/22/96]

10/18/96 5 ORDER by Honorable Charles A. Shaw granting motion to extend to 11/18/96 to fle brief pursuant to Rule 8009 of the Fed Rules of Bankruptcy Procedure [4-1] (cc: all counsel) (set) [Entry date 10/22/96]

Relevant Docket Entries

10/18/96 6 ORDER by Honorable Charles A. Shaw; Resp to court ddl 11/18/96 . . . The parties shall file written responses on or before 11/18/96, stating whether each party will or will not consent to this appeal being heard by the Panel. In the event a party does not file a response, the Court will assume that party consents to the Panel. SO ORDERED (CAS) (cc: all counsel) (set) [Entry date 10/22/96]

11/4/96 7 RESPONSE (Consent to have appeal heard by the Bankruptcy appeal panel) to court by appellant Magna Bank of IL [6-2] (cql) [Entry date 11/06/96]

11/7/96 8 MOTION by appellant Magna Bank of IL to extend time an additional 30 days up to and including Dec. 18, 1996 to file its brief pursuant to Rule 8009 of the FRBPr (mrc) [Entry date 11/13/96]

11/7/96 8 RULED DOCUMENT by Honorable Charles A. Shaw granting appellant's motion to extend time an additional 30 days up to and including Dec. 18, 1996 to file its brief pursuant to Rule 8009 of the FRBPr [8-1]; appellant's brief ddl 12/18/96 (cc: all counsel) (mrc) [Entry date 11/13/96]

11/14/96 9 RESPONSE (Concerning Bankruptcy Appellate Panel) to court by appellee Hartford Underwriter [6-2] (cql) [Entry date 11/20/96]

Relevant Docket Entries

12/14/96 10 RULED DOCUMENT by Honorable Charles A. Shaw granting motion for leave to file brief in excess of 15 pages [10-1] (cc: all counsel) (set) [Entry date 12/27/96]

12/18/96 10 MOTION by appellant Magna Bank of IL for leave to file brief in excess of 15 pages (set) [Entry date 12/27/96] [Edit date 12/27/96]

12/24/96 10 APPELLANT's Brief by appellant Magna Bank of IL re [1-1] w/attached appendix brief w/15 exhibits in separate expansion folder (set) [Entry date 12/27/96]

12/31/96 11 MOTION by appellee Hartford Underwriter to extend to 2/3/97 to file its brief (set) [Entry date 01/03/97]

12/31/96 11 RULED DOCUMENT by Honorable Charles A. Shaw granting motion to extend to 2/3/97 to file its brief [11-1] (cc: all counsel) GRANTED (CAS) (set) [Entry date 01/03/97]

12/31/96 12 MOTION by appellee Hartford Underwriter for leave to amend record on appeal (set) [Entry date 01/03/97]

12/31/96 13 RULED DOCUMENT by Honorable Charles A. Shaw granting motion for leave to amend record on appeal [12-1] (cc: all counsel) GRANTED (CAS) (set) [Entry date 01/03/97]

Relevant Docket Entries

1/30/97 14 MOTION by appellee Hartford Underwriter to extend time thru 2/10/97 to file its brief pursuant to Rule 8009 of Federal Bankruptcy Rules. (cql) [Entry date 02/03/97]

1/30/97 15 ORDER by Honorable Charles A. Shaw granting motion to extend time thru 2/10/97 to file its brief pursuant to Rule 8009 of Federal Bankruptcy Rules. [14-1] (cc: all counsel) (cql) [Entry date 02/03/97]

2/10/97 18 MOTION by appellee Hartford Underwriter for hearing (Oral Argument) pursuant to bankruptcy rule 8012. (cql) [Entry date 02/24/97]

2/18/97 16 MOTION by appellee Hartford Underwriter for leave to file brief in excess of 15 pages (set) [Entry date 02/20/97]

2/18/97 16 RULED DOCUMENT by Honorable Charles A. Shaw granting motion for leave to file brief in excess of 15 pages [16-1] (cc: all counsel) GRANTED (CAS)A (set) [Entry date 02/20/97]

2/18/97 17 APPELLEE's brief by appellee Hartford Underwriter re [1-1] LEAVE TO FILE (CAS) appendix to brief and designation of supplemental record in separate expansion folder (set) [Entry date 02/20/97]

Relevant Docket Entries

2/20/97 19 MOTION by appellant Magna Bank of IL to extend time up to and including March 14, 1997 to file its reply brief pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (mrc) [Entry date 02/25/97]

2/20/97 20 ORDER by Honorable Charles A. Shaw granting appellant's motion to extend time up to and including March 14, 1997 to file its reply brief pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure [19-1] (cc: all counsel) (mrc) [Entry date 02/25/97]

3/18/97 21 MOTION by appellant Magna Bank of IL for leave to file reply brief in excess of page limitation (cql) [Entry date 03/20/97]

3/18/97 21 RULED DOCUMENT by Honorable Charles A. Shaw granting motion for leave to file reply brief in excess of page limitation [21-1] (cc: all counsel) (cql) [Entry date 03/20/97]

3/18/97 22 REPLY brief by appellant Magna Bank of IL re [1-1] (cql) [Entry date 03/20/97]

9/10/97 23 JUDGMENT: by Honorable Charles A. Shaw for appellee Hartford Underwriter IT IS HEREBY ORDERED, ADJUDGED AND DECREED that he decision of the Bankruptcy Court is AFFIRMED terminating case w/attached memo (cc: all counsel) (set) [Entry date 09/16/97] [Edit date 09/16/97]

Relevant Docket Entries

10/9/97 24 RECEIPT # S98-000273 in the amount of $ 105.00 for notice of appeal (mrc) [Entry date 10/14/97]

10/9/97 25 NOTICE OF APPEAL filed by appellant Magna Bank of IL re: the District Court decision; [23-2] fee: $ 105.00 paid (mrc) [Entry date 10/14/97]

10/14/97 — REMARK — Notice of Appeal, Vol. #III of court file, and docket entries forwarded to Special Projects Unit this date (mrc) [Entry date 10/14/97]

10/15/97 — DELIVERED TO USCA — 1 Civil Appeal Cover Sheet, 2 Certified Copies of Notice of Appeal filed by respondent, Magna Bank of Illinois, 2 Certified Copies of Clerk's Docket entries and 2 copies of JUDGMENT/MEMO (CAS) filed on 09/10/97. Copy of NOA to Judge Shaw. cc: NOA, Clerk's Docket entries and USCA letter to parties. (pam) [Entry date 10/15/97]

10/20/97 26 DESIGNATION OF RECORD ON APPEAL by appellant Magna Bank of IL (kec) [Entry date 10/23/97]

10/31/97 27 NOTIFICATION AND BRIEFING SCHEDULE (USCA) FILED USCA #: 97-3859: method of appendix preparation notification 11/10/97, designation of record and statement of issues-appellant 11/10/97, designation of record-appellee 11/20/97, joint appendix (3 copies) 12/10/97, brief-appellant w/addendum 12/10/97, brief appellee 1/9/98, reply brief (optional) 1/23/98. (set) [Entry date 11/04/97]

7/27/98 28 Opinion from USCA on USCA number 97-3859 Opinion of USCA: affirm (cql) [Entry date 07/29/98]

8/19/98 29 ORDER FROM USCA copy filed USCA number: 97-3859EMSL requesting that counsel submit 21 copies of their response, limited to 10 pages by 8/31/98 (jwj) [Entry date 08/20/98]

9/22/98 30 ORDER FROM USCA copy filed USCA number: 97-2859 granting appellant suggestion for rehearing (jwj) [Entry date 09/23/98]

6/8/99 31 LETTER from USCA: USCA # 97-3859 EMSL re: to the petition for rehearing deadline. (jwj) [Entry date 06/10/99]

6/8/99 32 Opinion from USCA on USCA number 97-3859EMSL Opinion of USCA: reverse/ remand (jwj) [Entry date 06/21/99]

6/10/99 33 NOTICE By the Court of Appeals of the corrected opinion (the correction relates to the addition of a footnote on page one of the opinion) (jwj) [Entry date 06/21/99]

7/20/99 34 MANDATE W/OPINION ATTACHED from (USCA) reversing and remanding the Decision of the District Court [Appeal [25-1]] USCA number: 97-3859 (cc: all counsel) (cql) [Entry date 07/22/99]

7/28/99 35 JUDGMENT: by Honorable Charles A. Shaw — IT IS HEREBY ORDERED that the Judgment issued herein on September 10, 1997 is vacated. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the mandate of the Eighth Circuit Court of Appeals, the decision of the United States Bankruptcy Court for the Eastern District of Missouri in "In Re Hen House Interstate, Inc. NO. 91-45623-293" is reversed. IT IS FURTHER ORDERED that this matter is remanded to US Bankruptcy with instructions to vacate its judgment of August 14, 1996 and dismiss Hartford Underwriters' claim for lack of standing. (for appellant Magna Bank of IL against appellee Hartford Underwriter in the amount of $ none terminating case (cc: all counsel) (mrc) [Entry date 07/29/99]

Relevant Docket Entries

9/15/99 36 LETTER from USCA regarding Writ of Certiorari, petition placed on 9/8/99 docket #99-409 (cql) [Entry date 09/17/99]

[END OF DOCKET: 4:96cv1991]

EMERGENCY MOTION FOR RELIEF FROM AUTOMATIC STAY OR, IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION, AND FOR ORDER DENYING USE OF CASH COLLATERAL, AND REQUIRING SEGREGATION AND ACCOUNTING OF CASH COLLATERAL DATED SEPTEMBER 6, 1991

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Proceedings Under Chapter 11

Case No. 91-45623-293

In Re:

HEN HOUSE INTERSTATE, INC.,

Debtor.

LANDMARK BANK OF ILLINOIS,

Movant,

v.

HEN HOUSE INTERSTATE, INC.,

Respondent.

EMERGENCY MOTION FOR RELIEF FROM AUTOMATIC STAY OR, IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION, AND FOR ORDER DENYING USE OF CASH COLLATERAL AND REQUIRING SEGREGATION AND ACCOUNTING OF CASH COLLATERAL

Hearing date: September 6, 1991
Hearing time: 2:00 p.m.

Carl J. Spector, Esq.
Karen W. Fries, Esq.
Bryan, Cave, McPheeters & McRoberts
500 North Broadway
St. Louis, Missouri 63102
(314) 231-8600

Motion _____

Comes now Movant, Landmark Bank of Illinois (formerly known as Landmark Bank of Fairview Heights), by and through its undersigned attorneys, and for its *Emergency Motion For Relief From Automatic Stay, Or In The Alternative, For Adequate Protection, And For Order Denying Use Of Cash Collateral And Requiring Segregation and Accounting Of Cash Collateral* states pursuant to Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. §§ 362 and 363, as follows:

Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, as this proceeding arises in the above-styled Chapter 11 proceeding.

Parties

2. Landmark Bank of Illinois (formerly known as Landmark Bank of Fairview Heights) ("Landmark") is an Illinois banking corporation with its principal place of business in Fairview Heights, Illinois.

3. Hen House Interstate, Inc. (the "Debtor") is a Delaware corporation and is the debtor-in-possession in the Chapter 11 case in which this proceeding is filed.

FIRST CLAIM
(For Relief From Automatic Stay)

4. Landmark is the holder of a certain revolving line of credit note, executed and delivered by the Debtor as of June 2, 1987 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $350,000.00 with interest thereon, as more fully set forth therein (the "Revolving Note"). A true and correct copy of the Revolving Note is filed contemporaneously herewith under separate cover as Exhibit 1 and incorporated herein by reference.

5. Landmark is the holder of a certain term promissory note, executed and delivered by the Debtor as of June 2,

1987 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $4,460,000.00 with interest thereon, as more fully set forth therein (the "Term Note"). A true and correct copy of the Term Note is filed contemporaneously herewith under separate cover as Exhibit 2 and incorporated herein by reference.

6. Landmark is the holder of a certain promissory note, executed and delivered by the Debtor as of March 31, 1991 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $53,000.00 with interest thereon as more fully set forth therein (the "Promissory Note"). A true and correct copy of the Promissory Note is filed contemporaneously herewith under separate cover as Exhibit 3 and incorporated herein by reference.

7. The Revolving Note and Term Note were amended pursuant to a First Amendment to Promissory Notes ("First Amendment to Notes") dated December 28, 1990. A true and correct copy of the First Amendment to Notes is filed contemporaneously herewith under separate cover as Exhibit 4 and incorporated herein by reference. The Revolving Note, Term Note, First Amendment to Notes and Promissory Note are hereinafter collectively referred to as the "Notes".

8. In connection with the execution of the Notes, the Debtor and Landmark entered into a loan agreement executed May 15, 1987 (the "Original Loan Agreement"). A true and correct copy of the original Loan Agreement is filed contemporaneously herewith under separate cover as Exhibit 5 and incorporated herein by reference.

9. The Loan Agreement was amended pursuant to a First Amendment to Loan Agreement ("Loan Agreement Amendment #1") dated December 28, 1990. A true and correct copy of the Loan Agreement Amendment #1 is filed contemporaneously herewith under separate cover as Exhibit 6 and incorporated herein by reference.

10. The Loan Agreement was again amended pursuant to a Second Amendment to Loan Agreement ("Loan Agreement Amendment #2") dated March 31, 1991. A true and correct copy of the Loan Agreement Amendment #2 is filed contemporaneously herewith under separate cover as Exhibit 7 and incorporated herein by reference. The original Loan Agreement, Loan Agreement Amendment #1 and Loan Agreement Amendment #2 are hereinafter collectively referred to as the "Loan Agreement."

11. The Debtor executed and delivered to Landmark the following documents in order to secure the repayment of all obligations of Debtor to Landmark:

a. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 1524, Page 727 in the records of the Recorder's Office of the County of Champaign, State of Illinois (the "Champaign County Mortgage"), which encumbers certain premises in the County of Champaign, State of Illinois, described more fully therein (the "Champaign County Premises"). A true and correct copy of the Champaign County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 8 and incorporated herein by reference.

b. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 148, Page 320 in the records of the Recorder's Office of the County of DeWitt, State of Illinois (the "DeWitt County Mortgage"), which encumbers certain premises in the County of DeWitt, State of Illinois, described more fully therein (the "DeWitt County Premises"). A true and correct copy of the DeWitt County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 9 and incorporated herein by reference.

c. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 180011 in the records of the Recorder's Office of the County of Ford, State of Illinois (the "Ford County Mortgage"), which encumbers certain premises in the County of Ford, State of Illinois, described more fully therein (the "Ford County Premises"). A true and correct copy of the Ford County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 10 and incorporated herein by reference.

d. Deed of Trust given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number I775025 at I1683P2261 et. seq. in the records of the Recorder's Office of the County of Jackson, State of Missouri (the "Jackson County Deed"), which encumbers certain premises in the County of Jackson, State of Missouri, described more fully therein (the "Jackson County Premises"). A true and correct copy of the Jackson County Deed is filed contemporaneously herewith under separate cover as Exhibit 11 and incorporated herein by reference.

e. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 173, Page 518 in the records of the Recorder's Office of the County of Laurel, State of Kentucky (the "Laurel County Mortgage"), which encumbers certain premises in the County of Laurel, State of Kentucky, described more fully therein (the "Laurel County Premises"). A true and correct copy of the Laurel County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 12 and incorporated herein by reference.

f. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 3423, Page 1266 in the records of the Recorder's Office of the County of Madison, State of Illinois (the "Madison County Mortgage"), which encumbers certain premises in the County of Madison, State of Illinois, described more fully therein (the "Madison County Premises"). A true and correct copy of the Madison County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 13 and incorporated herein by reference.

g. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 399, Page 485 in the records of the Recorder's Office of the County of Marion, State of Illinois (the "Marion County Mortgage"), which encumbers certain premises in the County of Marion, State of Illinois, described more fully therein (the "Marion County Premises"). A true and correct copy of the Marion County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 14 and incorporated herein by reference.

h. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 87-10253 in the records of the Recorder's Office of the County of McLean, State of Illinois (the "McLean County Mortgage"), which encumbers certain premises in the County of McLean, State of Illinois, described more fully therein (the "McLean County Premises"). A true and correct copy of the McLean County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 15 and incorporated herein by reference.

i. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 374, Page 247 in the records of the Recorder's Office of the County of Morgan, State of Indiana (the "Morgan County Mortgage"), which encumbers certain premises in the County of Morgan, State of Indiana, described more fully therein (the "Morgan County Premises"). A true and correct copy of the Morgan County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 16 and incorporated herein by reference.

j. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 1987, Page 7516 in the records of the Recorder's Office of the County of Delaware, State of Indiana (the "Delaware County Mortgage"), which encumbers certain premises in the County of Delaware, State of Indiana, described more fully therein (the "Delaware County Premises"). A true and correct copy of the Delaware County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 17 and incorporated herein by reference.

k. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 2676, Page 1130 in the records of the Recorder's Office of the County of St. Clair, State of Illinois (the "St. Clair County Mortgage"), which encumbers certain premises in the County of St. Clair, State of Illinois, described more fully therein (the "St. Clair County Premises"). A true and correct copy of the St. Clair County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 18 and incorporated herein by reference.

l. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 167252 in Book 367, Page 345 in the records of the Recorder's Office of the County of Washington, State of Illinois (the "Washington County Mortgage"), which encumbers certain premises in the County of Washington, State of Illinois, described more fully therein (the "Washington County Premises"). A true and correct copy of the Washington County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 19 and incorporated herein by reference.

m. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number R87-28965 in the records of the Recorder's Office of the County of Will, State of Illinois (the "Will County Mortgage"), which encumbers certain premises in the County of Will, State of Illinois, described more fully therein (the "Will County Premises"). A true and correct copy of the Will County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 20 and incorporated herein by reference.

n. Collateral Pledge Agreement by the Debtor to Landmark dated May 15, 1987 (the "Collateral Pledge") wherein Debtor pledged to Landmark a certificate of deposit and other items as more fully described therein. A true and correct copy of the Collateral Pledge is filed contemporaneously herewith under separate cover as Exhibit 21 and incorporated herein by reference.

o. Security Agreement-Equipment by the Debtor to Landmark dated May 15, 1987 (the "Equipment Security Agreement") wherein the Debtor granted to Landmark a security interest in furniture, fixtures, equipment, and machinery of every kind and nature, as more fully set forth in the Equipment Security Agreement. A true and correct copy of the Equipment Security Agreement is filed contemporaneously herewith under separate cover as Exhibit 22 and incorporated herein by reference.

p. Security Agreement (Inventory-Accounts Receivable) by the Debtor to Landmark dated May 15, 1987 (the "Inventory Security Agreement") wherein the Debtor granted to Landmark a security interest in the Debtor's inventory and accounts receivable as more fully set forth in the Inventory Security Agreement. A true and correct copy of the Inventory Security Agreement is filed contemporaneously herewith under separate cover as Exhibit 23 and incorporated herein by reference.

q. Assignment of Interest in Contracts and Leases by the Debtor to Landmark dated May 15, 1987 (the "Contracts/Leases Assignment") wherein the Debtor assigned to Landmark all of the Debtor's right, title and

interest in and to all contracts, permits, licenses, easements and leases, as more fully described therein. A true and correct copy of the Contracts/Leases Assignment is filed contemporaneously herewith under separate cover as Exhibit 24 and incorporated herein by reference.

r. Assignment of Contract Rights by the Debtor to Landmark dated May 15, 1987 (the "Contract Rights Assignment") wherein the Debtor granted to Landmark a security interest in all of the Debtor's rights under a Management Services Agreement between the Debtor and Omni Outdoor Advertising, Inc. as more fully described therein. A true and correct copy of the Contract Rights Assignment is filed contemporaneously herewith under separate cover as Exhibit 25 and incorporated herein by reference.

12. The Champaign County Mortgage, DeWitt County Mortgage, Ford County Mortgage, Jackson County Deed, Laurel County Mortgage, Madison County Mortgage, Marion County Mortgage, McLean County Mortgage, Morgan County Mortgage, Delaware County Mortgage, St. Clair County Mortgage, Washington County Mortgage, Will County Mortgage, Collateral Pledge, Equipment Security Agreement, Inventory Security Agreement, Contracts/Lease Assignment and Contract Rights Assignment are hereinafter collectively referred to as the "Collateral Documents." The Notes, the Loan Agreement and the Collateral Documents are hereinafter sometimes collectively referred to as the "Loan Documents."

13. Perfection of Landmark's security interests granted in the Collateral Documents, was effectuated *inter alia* by the filing of Uniform Commercial Code Financing Statements with the offices and in the indexes as noted thereon (the "Filings"). True and correct copies of the Filings are filed contemporaneously herewith under separate cover as Exhibit 26 and incorporated herein by reference.

14. As of the petition date the Debtor was indebted to Landmark in the aggregate amount of $4,139,676.57 plus accruing interest, costs, expenses and fees of collection (the "Indebtedness").[1]

15. The obligations incurred in connection with the Notes are in default and all amounts owed thereunder are due and payable.

16. All of the real and personal property on which Landmark holds security interests is hereinafter collectively referred to as the "Collateral."

17. Landmark's interests in the Collateral are not adequately protected. The Debtor has not provided Landmark with the cash funds necessary (i) to preserve the value of Landmark's position in the Collateral and (ii) to maintain the Collateral in good condition against physical depreciation and other items.

---

1. Interest has been calculated at the pre-default rate. Landmark reserves the right to claim interest at the Default Rates specified in the Loan Documents.

18. Landmark hereby reserves any and all of its rights under 11 U.S.C. § 362(d)(2).

19. Sufficient factual and legal cause exists for the relief requested herein.

20. Landmark reserves any and all rights which it may have to dispose of the Collateral and to assert claims against the Debtor for any deficiency owed to Landmark after disposition of the collateral.

WHEREFORE, Landmark prays that this Court enter an order:

(a) Granting Landmark relief from the 11 U.S.C. § 362(a) automatic stay, thereby allowing Landmark to exercise its full rights under the Loan Documents;

(b) Directing the Debtor to surrender immediate possession of the Collateral to Landmark;

(c) Stating that no part of the costs of this proceeding be charged against Landmark or against the Collateral;

(d) Authorizing Landmark to apply the proceeds from any sale of the Collateral, less attorneys' fees and expenses incurred to the date of such sale, to its claim and ordering that Landmark's claim be allowed against the Debtor in the amount of any deficiencies; and

(e) Granting Landmark such other and further relief as may be necessary to protect its interests in the Collateral.

SECOND CLAIM
(Alternative Request for Adequate Protection)

21. Landmark hereby restates and realleges each and every allegation contained in Paragraphs 1 through 20 of this Motion and incorporates the same herein by reference.

22. Pursuant to 11 U.S.C. § 362, this Court may refuse to grant Landmark the relief sought in its First Claim only if Landmark is provided adequate protection that will result in the realization by Landmark of the indubitable equivalent of Landmark's interests in the Collateral on the filing date of Debtor's Chapter 11 petition herein.

23. The Debtor continues to operate its business using the Collateral which secures the Debtor's obligations to Landmark.

24. Such use of the Collateral by the Debtor is causing a substantial decline in the value of Landmark's interests in the Collateral.

25. Realization of the indubitable equivalent of Landmark's interests in the Collateral requires that this Court order that the Debtor preserve and adequately protect the Collateral and Landmark's petition-date position therein.

WHEREFORE, in the alternative, Landmark prays that this court enter an order providing Landmark with adequate protection sufficient to insure the indubitable equivalent of Landmark's interests in the Collateral, which adequate protection shall include, but not be limited to, an order of this Court requiring that:

(a) the Debtor shall pay to Landmark such amounts and take such other steps as will adequately protect Landmark against the decline in value of the Collateral during the pendency of the 11 U.S.C. § 362 automatic stay;

(b) the Debtor shall cause all taxes and penalties accruing on the Collateral to be paid monthly and without becoming delinquent;

(c) the Debtor shall obtain and keep in force adequate insurance on the Collateral, with Landmark named as the loss payee thereof, evidence of which shall be provided to Landmark;

(d) the Debtor shall properly repair, service, and maintain the Collateral in good condition, reasonably satisfactory to Landmark and in accordance with applicable law;

(e) the Debtor shall cooperate and provide assistance to enable Landmark to inspect the Collateral and the Debtor's books and records at any time and from time to time as Landmark shall reasonably elect to insure compliance with this Court's order; and

(f) if the Debtor fails to comply with respect to any order of this court relating to the Collateral, Landmark immediately shall have all the rights and remedies otherwise granted to it by the Loan Documents including, without limitation, immediate possession of the Collateral, relief from the 11 U.S.C. § 362(a) automatic stay, and such other relief as will provide Landmark the indubitable equivalent of its interests in the Collateral.

THIRD CLAIM
(For Order Denying Use and Requiring Segregation of Cash Collateral)

26. Landmark hereby restates and realleges each and every allegation of Paragraphs 1 through 25 of this Motion and incorporates the same herein by reference.

27. All cash or cash equivalents representing proceeds of the Collateral that are now in the Debtor's possession, custody, or control or which will come into its possession, custody or control during the pendency of this proceeding constitute cash collateral, as that term is defined in § 363(a) of the United States Bankruptcy Code (the "Cash Collateral").

28. Section 363(c)(2) of the United States Bankruptcy Code prohibits the Debtor from using the Cash Collateral unless Landmark consents to the use of the Cash Collateral or the Court authorizes its use, after notice and a hearing, and a specific finding that Landmark's interests in the Cash Collateral are adequately protected.

29. Landmark objects and does not consent to Debtor's use of the Cash Collateral.

30. Landmark's interests in the Cash Collateral cannot be adequately protected in this proceeding because:

(i) The Collateral consists of deteriorating assets and the Cash Collateral generated therefrom, if used and expended, would result in a decline in the value of Landmark's interests in the Collateral;

(ii) the Debtor does not have available unencumbered assets or property from which it can fund periodic cash payments or grant additional liens in order to protect Landmark from a decline in the value of the Collateral; and

(iii) the Debtor has operated, and is expected to continue to operate, at a loss. As a result, the Debtor will not generate or have available sufficient post-petition property with which to protect Landmark from the decline in the value of its interests in the Collateral by way of periodic cash payments or granting additional liens.

31. Because the Debtor is and will be unable to adequately protect Landmark's interest in the Cash Collateral, the Debtor can only use the Cash Collateral if Landmark consents to such use. Landmark objects and does not consent to the Debtor's use of Cash Collateral.

32. The Court should, pursuant to § 363(c)(4) of the United States Bankruptcy Code, immediately order and direct the Debtor to segregate, account for, and maintain the Cash Collateral in a separate account at Landmark.

WHEREFORE, Landmark prays that this Court enter an order:

(a) Denying the Debtor's right to use the Cash Collateral;

(b) Prohibiting the Debtor from using or dissipating the Cash Collateral;

(c) Directing the Debtor to immediately segregate and account to Landmark for the Cash Collateral and deposit all Cash Collateral in a separate account at Landmark;

(d) Directing the Debtor to forthwith prepare and deliver to Landmark an accounting of all present and future Cash Collateral;

(e) Conditioning continuation of the automatic stay as to Landmark, and the Collateral, upon the Debtor's compliance with each of the above prayers; and

(f) Granting such other and further relief as the Court deems just and proper.

LANDMARK BANK OF ILLINOIS

By s/ Carl J. Spector
Carl J. Spector, Esq. #30509
Karen W. Fries, Esq. #39782
Bryan, Cave, McPheeters & McRoberts
Suite 2000
500 North Broadway
St. Louis, Missouri 63102
(314) 231-8600

Its Attorneys

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CASE NUMBER 91-45623-293

IN PROCEEDINGS UNDER CHAPTER 11

IN RE:

HEN HOUSE INTERSTATE, INC.,

Debtor.

ORDER GRANTING LANDMARK BANK OF ILLINOIS RELIEF FROM THE AUTOMATIC STAY

This matter having come before the Court on the *Emergency Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection, and for Order Denying Use of Cash Collateral and Requiring Segregation and Accounting of Cash Collateral* (the "Motion") filed by Landmark Bank of Illinois ("Landmark"); the Court having heard the arguments of Landmark's counsel in support thereof and the statements of all other parties appearing in Court in connection therewith; due and appropriate notice of the Motion and the hearing thereon having been given; it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Local District Court Rule 29 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the Court being fully advised in the

premises and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

The automatic stay of 11 U.S.C. § 362 shall be and hereby is terminated with respect to Landmark and its interest in the Collateral, as defined in the Motion.

DATED: September __, 1991.

UNITED STATES BANKRUPTCY JUDGE

Emergency Motion for Relief from Automatic Stay

U.S. Bankruptcy Court, Eastern District of Missouri,
1114 Market Street, St. Louis, Missouri 63101

NOTICE OF MOTION COVER SHEET

Name of Debtor
HEN HOUSE INTERSTATE, INC.

Case Number/Judge
91-45623-293

* * *

Plaintiffs/Movant
LANDMARK BANK OF ILLINOIS

Attorneys (Firm Name, Address & Telephone No.)
Carl J. Spector, Esq.
BRYAN, CAVE, McPHEETERS
& McROBERTS
500 N. Broadway, Suite 2000
St. Louis, MO 63102

Defendants/Respondent
HEN HOUSE INTERSTATE, INC.

Attorneys (if known)
David A. Warfield, Esq.
HUSCH, EPPENBERGER, DONOHUE,
Cornfeld & Jenkins
100 North Broadway
St. Louis, MO 63102

Emergency Motion for Relief from Automatic Stay

Print Name of Attorney (or Plaintiff/Movant)
CARL J. SPECTOR

Signature of Attorney

s/ Carl J. Spector

Date
09/06/91

Return Date
Sept. 6, 1991

Time
2:00 p.m.

NATURE OF MOTION
(Check All Boxes that Apply to This Motion)

☒ To Grant Relief from the Automatic Stay — 11 U.S.C. Section 362(d) (terminate, annul, modify, or condition the Automatic Stay)

(*$60.00 fee required*)

* * *

☐ Other — (Specify Type of Motion)
Motion for Relief from Automatic Stay or, in the Alternative, for Adequate Protection, and for Order Denying Use of Cash Collateral and Requiring Segregation of Cash Collateral.

FILING FEE (Check One Box) ☒ Fee Attached

* * *

EMERGENCY MOTION FOR ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. § 364, TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, AND GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTY DATED SEPTEMBER 7, 1991

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Proceedings Under Chapter 11

Case No. 91-45623-293

In re:

HEN HOUSE INTERSTATE, INC.,

Debtor.

HEN HOUSE INTERSTATE, INC.,

Movant.

EMERGENCY MOTION FOR ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. § 364, TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, AND GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTY

Emergency Motion to Obtain Post-Petition Financing

Hearing Date: September 6, 1991
Hearing Time: 2:00 p.m.

David A. Warfield, Esq.
Husch & Eppenberger
100 North Broadway, St. 1300
St. Louis, MO 63102
(314) 421-4800

Motion: E

Comes now Hen House Interstate, Inc., ("Debtor"), by and through its undersigned counsel, and for its *Emergency Motion for Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364, to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and Granting Adequate Protection to Pre-Petition Secured Party* states as follows:

I. JURISDICTION

1. On September 5, 1991 ("Petition Date"), Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Code"). Since the Petition Date, Debtor has continued in possession of its properties and has operated its various businesses as a debtor in possession.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 29 of the Local Rules for the United States District Court for the Eastern District of Missouri. This is a core proceeding pursuant to 28 U.S.C. § 157.

II. DESCRIPTION OF THE DEBTOR'S BUSINESS

3. Debtor currently owns or operates 18 restaurants in several midwestern states. Hen House Restaurants are typically located on major interstate highways and serve low to moderately-priced meals. In addition, several of the Hen House Restaurants also sell gasoline and other petroleum products. Some of the restaurants have gift shops where various items of inexpensive merchandise is sold.

4. Debtor also owns and operates an outdoor advertising firm located in Muncie, Indiana, which does business as Omni Outdoor Advertising. Typically, Debtor leases small tracts of real estate where it places its billboard apparatus. Debtor then enters into various short-term contracts to display advertisements for various its customers.

III. DEBT AND CAPITAL STRUCTURE

5. Debtor's total indebtedness, both secured and unsecured, as of the Petition Date, is approximately $5,000,000, as described in more detail below.

6. Landmark Bank of Illinois ("Landmark") is Debtor's primary secured creditor. Pursuant to various and sundry pre-petition loan documents, instruments, and agreements, Debtor owes Landmark approximately $3,925,000 (the "Pre-Petition Indebtedness"). To secure the Pre-Petition Indebtedness, Landmark has a valid, perfected, first priority lien and security interest in substantially all of Debtor's assets, including, without limitation, all of Debtor's real estate, inventory, accounts receivable, furniture, fixtures,

machinery, equipment, and the proceeds and products therefrom (the "Pre-Petition Collateral").

7. Debtor currently has approximately 600 vendors with whom it has open accounts. The approximate total amount of these claims is $1,000,000. Debtor also has numerous lessors, both for its restaurants and in its billboard businesses, from whom Debtor leases both real and personal property.

8. Debtor currently has 450 issued and outstanding shares of common stock. The common stock is closely held among approximately twelve shareholders, most of whom are members of the family of Hen House's founder, William Dooner.

IV. PROPOSED POST-PETITION FACILITY

9. As debtor in possession, Debtor needs to borrow funds from Landmark in order to meet its on-going cash and credit requirements during its Chapter 11 case, and requires immediate and continued use of Landmark's cash collateral (the "Cash Collateral"). Consequently, Debtor requests this Court approve a Post-Petition Loan Agreement between Debtor, as borrower, and Landmark as the DIP lender. The Post-Petition Loan Agreement permits Debtor to borrow on a secured basis up to an aggregate amount of $300,000. A copy of the proposed form of the Post-Petition Loan Agreement is attached hereto has *Exhibit A*.

10. In addition, Debtor asks that it be granted access to the borrowing called for in the Post-Petition Loan Agreement (the "Post-Petition Facility") on an expedited and interim

basis pursuant to an Emergency Order ("Emergency Order"), so that it can obtain up to $50,000 in cash from the Post-Petition Facility for the 20-day period before this Court concludes a final hearing on this Motion. The Emergency Order is attached hereto as an *Exhibit* to the Post-Petition Loan Agreement. It is essential to avoid immediate and irreparable harm to Debtor's businesses, cash flows, inventory, and customer base that Debtor obtain the requested cash to meet these needs. Any disruptions would severely impact Debtor's cash flow and cash availability adversely, and irreparably hinder Debtor's reorganization effort. At the final hearing, Debtor will seek entry of a Final Order ("Final Order") approving the entire $300,000 Post-Petition Facility and use of Cash Collateral on the terms and conditions specified in the Emergency Order.

11. Reference should be made to the Post-Petition Loan Agreement itself for a full recitation of the terms and conditions of the proposed Post-Petition Facility. The following are more detailed descriptions of the primary provisions of the Post-Petition Loan Agreement[1]:

---

1. All capitalized terms, unless otherwise defined herein, shall have the same meaning as in the Post-Petition Loan Agreement.

Amount of Facility:	$300,000 revolving line of credit
Term:	3 months
Interest Rate:	Prime + 5%
Commitment Fee:	None
Unusual Facility Fee:	None
Security:	First priority liens and administrative claims on all assets of the Debtor

12. If the Post-Petition Loan Agreement and the Debtor's right to use Cash Collateral are not approved, the consequences would include a rapid deterioration of viable businesses that can and should be reorganized. There are more than 500 employees of the Debtor whose jobs will be at risk if there is no reorganization. Furthermore, various suppliers depend on the Debtor's businesses for a substantial portion of their income. The seasonality of the Debtor's businesses prevent the Debtor from operating its businesses solely on cash collateral. Without the availability of the Post-Petition Facility, the Debtor's suppliers would have no assurance of repayment, and most likely would refuse to provide the Debtor with customary trade terms. In fact, the Debtor is aware that its primary food vendor, Prairie Farms Dairy, Inc., has agreed to extend two-week trade credit terms in large part because of the presence of the Post-Petition Facility.

13. The amount requested pursuant to the Post-Petition Facility is reasonable. Not only must Debtor make its ordinary course expenditures in a timely fashion, but it also must compensate for the short-term disruption in cash flows that the Chapter 11 filing will precipitate, and for the adverse reaction by some suppliers in placing the Debtor on cash-on-delivery terms. In short, the proposed financing is critical to assure that the Debtor can stay in business.

14. Sections 363 and 364 of the Bankruptcy Code set forth certain standards for approving secured financing arrangements and cash collateral usage. The Post-Petition Loan Agreement implements these same standards: (i) credit on an unsecured, administrative, or priority basis must be unavailable; (ii) existing lienholders whose interests are adversely affected must be adequately protected; and (iii) relief may be granted only after a duly noticed hearing. Further, under Federal Rules of Bankruptcy Procedure 4001(c)(2), this Court may permit borrowings under the Post-Petition Loan Agreement prior to the final hearing to the extent necessary to avoid immediate and irreparable harm to the Debtor's business.

15. A debtor is permitted to obtain credit or incur debt secured by superpriority lien, as contemplated by the Post-Petition Loan Agreement, only if it is unable to obtain such credit elsewhere. 11 U.S.C. § 364(d)(1). To satisfy statutory obligations under this Section, a debtor need not seek credit from every possible lender before concluding that such credit is unavailable. *Bray v. Shenandoah Federal Savings and Loan Association* (In re Snowshoe Co., Inc.), 789 F.2d 1085 (4th Cir. 1986).

16. Debtor contacted a number of prospective lenders to determine whether it could obtain a DIP financing package of comparable magnitude on better terms. Debtor was unable to find any lender willing to extend credit to Debtor post-petition on similar terms.

17. The Post-Petition Loan Agreement represents an arm's-length transaction among the Debtor and Landmark. In negotiating the terms of the Post-Petition Facility, the Debtor has exercised its sound business judgment and has upheld its fiduciary duty to its bankruptcy estate.

18. In order to preserve the existing value of the Debtor's businesses, it is critical that the Debtor create a constructive environment at the outset of these proceedings. By continuing its relationship with Landmark, the Debtor believes the groundwork will be laid to stabilize the Debtor's businesses and thereby facilitate a positive economic framework within which the Debtor ultimately will be able to reorganize.

V. DEBTOR REQUIRES IMMEDIATE AND CONTINUED USE OF LANDMARK'S CASH COLLATERAL

19. The Debtor's cash needs are critical. The Debtor requires the use of all Cash Collateral, as well as approval of the Post-Petition Facility, in order to facilitate continued operations.

20. Pursuant to Section 363(c)(2) of the Code, the court may permit Debtor's use of Cash Collateral so long as the

interest of any third party in the Cash Collateral is adequately protected. Pursuant to Bankruptcy Rule 4001(c)(2), the Court may permit the Debtor's use of cash collateral prior to a final hearing as is necessary to avoid immediate and irreparable harm.

21. The Debtor's use of Cash Collateral will facilitate continued operations and directly affect the anticipated use of the Post-Petition Facility. Without the use of Cash Collateral, it is anticipated that the Post-Petition Facility may not provide adequate funds to satisfy the Debtor's cash needs, and conversely, the use of Cash Collateral by the Debtor will reduce the amount of funds actually drawn on the Post-Petition Facility.

22. As adequate protection under 364(c) and 361 of the Code, and as security for and inducement to Landmark to permit the Debtor to use cash collateral, the Debtor has agreed to provide to Landmark a first priority lien and security interest on all assets of the Debtor.

A. THE DEBTOR REQUIRES ENTRY OF AN EMERGENCY ORDER TO AVOID IMMEDIATE AND IRREPARABLE HARM

23. The Debtor's request to use cash collateral and to access $50,000 of the Post-Petition Facility on an emergency basis is only so much as is necessary in order to avoid immediate and irreparable harm over the first 20 days of these proceedings. Trade creditors have tightened the Debtor's credit terms and the Debtor reasonably anticipates that many creditors (aside from Prairie Farms Dairy, Inc.)

will insist on cash on delivery terms upon the commencement of these proceedings.

24. If the interim relief requested is not granted, the Debtor will be threatened with a virtual shut down of its business. The Debtor will suffer immediate and irreparable harm to its cash flows, sales, goodwill and reputation. The Debtor's prospects for consummating any plan of reorganization will diminish greatly.

B. DEBTOR HAS MET THE LEGAL STANDARDS FOR ENTRY OF AN EMERGENCY ORDER

25. The immediate and irreparable harm standard, applied to a business that hopes to reorganize, may be satisfied by the threatened loss of business. *In re Ames Department Store*, 115 B.R. 34, 36 (Bankr. S.D.N.Y. 1990). (citing *Lemmes Motors, Inc. v. Ford Motor Corp.*, 429 F.2d 1197 (2nd Cir. 1970)). Similarly, in *In re Sullivan Ford Sales* 2 B.R. 350, 356 (Bankr. D. M. 1980) the court stated that *ex parte* relief for interim financing will be granted when the Debtor shows that denial of such relief would result in "immediate and irreparable injury, loss, or damage to the debtor or to the reorganization effort." The Debtor requests that this Court approve the form and manner of notice with respect to the final hearing on the closed Post-Petition Facility in the form attached hereto as *Exhibit B*. A Committee of Unsecured Trade Creditors has yet to be appointed in this case. The Debtor proposes to serve and give immediate notice of the final hearing on this motion to: (a) the United States Trustee and (b) each of the creditors on the list filed by the Debtor pursuant to Bankruptcy Rule 1007(d).

26. Because denial of the emergency relief sought herein would cause immediate and irreparable injury, loss, and damage to the Debtor and its reorganization efforts, the notice of this emergency hearing, through either attempted hand delivery, or facsimile transmission is not only in compliance with Federal Rule of Bankruptcy Procedure 4001(c)(1) and (3), but it is substantially more than adequate and sufficient in these urgent circumstances given the immediate and irreparable harm that will result from failure to obtain interim financing. The Debtor respectfully requests that this Court schedule a hearing on the date of the filing of this Motion to approve the Debtor's request for interim financing and use of Cash Collateral.

IV. PRAYER FOR RELIEF

WHEREFORE, Debtor respectfully requests that this Court:

a. enter an Emergency Order in the form attached hereto as an *Exhibit* to the Post-Petition Loan Agreement authorizing the requested interim financing of $50,000 pursuant to the Post-Petition Facility and authorizing the Debtor to use Cash Collateral;

b. after the final hearing, enter a Final Order approving in all respects the terms of the Emergency Order and authorizing the Debtor to obtain credit pursuant to the Post-Petition Loan Agreement and authorizing the Debtor's use of Cash Collateral;

c. find that Landmark is adequately protected as is necessary under Sections 361, 363 and 364 of the Bankruptcy Code;

d. approve the substance, form and content of the Notice of Final Hearing in the form attached hereto as *Exhibit B*; and

e. authorize such other and further relief as the Court deems just and equitable.

HUSCH & EPPENBERGER

By: s/ David A. Warfield
David A. Warfield
Susan M. Spraul
100 North Broadway, Suite 1300
St. Louis, MO 63102
(314) 421-4800

Attorneys for Hen House Interstate, Inc., Debtor and Debtor in Possession

EXHIBIT A

POST-PETITION LOAN AGREEMENT

BETWEEN

LANDMARK BANK OF ILLINOIS

AND

HEN HOUSE INTERSTATE, INC.
CHAPTER 11 DEBTOR AND
DEBTOR-IN-POSSESSION

September __, 1991

CONTENTS

		Page
SECTION 1.	LOAN	1
1.1	The Revolving Line of Credit Loan	1
1.2	The Closing	3
1.3	Expenses	3
SECTION 2.	REPRESENTATIONS AND WARRANTIES	3
2.1	Subsidiaries	3
2.2	Corporate Organization and Authority	4
2.3	Business, Property and Indebtedness	4
2.4	Financial Statements	4
2.5	Full Disclosure	5
2.6	Pending Litigation	5
2.7	Title to Properties; No Title Retention Agreements	5
2.8	Patents and Trademarks	6
2.9	Transaction is Legal and Authorized	6
2.10	No Defaults or Restrictions	6
2.11	Governmental Consent	7
2.12	Taxes	7
2.13	Use of Proceeds	7
2.14	Compliance with Law	7
2.15	Restrictions on Borrower	8
2.16	ERISA	8

SECTION 3. CLOSING CONDITIONS 8

3.1 Collateral and Collateral Documents 8
3.2 Real Estate and Other Property-Related Documents 9
3.3 Insurance Policies 9
3.4 Financial Statements 9
3.5 UCC Financing Statements 10
3.6 Payment of Fees and Expenses 10
3.7 Corporate Documentation 10
3.8 Court Order 10
3.9 Conditions Precedent to All Advances; Application for Advance 10

SECTION 4. BORROWER BUSINESS COVENANTS 11

4.1 Payment of Taxes and Claims 11
4.2 Maintenance of Corporate Existence and Properties 11
4.3 Payment of Loan and Maintenance of Office 13
4.4 Further Action 13
4.5 Best Efforts 13
4.6 Projections and Budget 13
4.7 Tax Refunds and Extraordinary Sale Proceeds 13
4.8 Disposal of Stock of Borrower 14
4.9 Sale of Assets; Merger 14
4.10 Sale and Leaseback 14
4.11 Liens and Encumbrances 14
4.12 Limitation on Loans 15
4.13 Dividends 15

4.14 Transactions of Affiliates 15
4.15 Management 15
4.16 Minimum Earnings 16

SECTION 5. INFORMATION AS TO BORROWER 16

5.1 Financial and Business Information 16
5.2 Officers' Certificates 18
5.3 Inspection 18

SECTION 6. EVENTS OF DEFAULT 18

6.1 Nature of Events 18
6.2 Remedies 20

SECTION 7. INTERPRETATION OF THIS AGREEMENT 21

7.1 Terms Defined 21
7.2 Directly or Indirectly 23
7.3 Governing Law 23
7.4 Section Headings and Construction 23

SECTION 8. AMENDMENT AND WAIVER 23

SECTION 9. MISCELLANEOUS 23

9.1 Notices 23
9.2 Duplicate Originals 24
9.3 Reproduction of Documents 24
9.4 Survival 24
9.5 Successors and Assigns 24
9.6 Non-Waiver 25

THIS POST-PETITION LOAN AGREEMENT (the "Agreement") made on this __ day of September, 1991, by and between Hen House Interstate, Inc., debtor and debtor-in-possession (the "Borrower"), a Delaware corporation and Landmark Bank of Illinois (formerly Landmark Bank of Fairview Heights) (the "Lender"), an Illinois banking corporation.

WHEREAS, Borrower is currently indebted to Lender pursuant to the terms of a Loan Agreement dated May 15, 1987 (the "1987 Loan Agreement"), which provided for the extension of a term loan ("1987 Term Loan") and revolving credit loan ("1987 Revolver Loan"), all pursuant to the terms of the 1987 Loan Agreement, and

WHEREAS, the 1987 Term Loan and 1987 Revolver Loan (collectively the "1987 Loan") are secured, *inter alia*, by first lien mortgages on the parcels of real estate owned by Borrower and identified in *Exhibit A* attached, and

WHEREAS, THE 1987 Loan Agreement was amended by a First Amendment to Loan Agreement dated December 28, 1990, which amendment provided, *inter alia*, for an increase in the amount of the 1987 Loan, and by a Second Amendment to Loan Agreement dated in March, 1991, which provided, *inter alia*, for the extension of the maturity of indebtedness in the amount of $53,000 from Borrower to Lender (the 1987 Loan Agreement, as amended by said Amendments, being continued to be referred to as the "1987 Loan Agreement" and the indebtedness evidenced by said Amendments shall be deemed part of the 1987 Loan), and

WHEREAS, Borrower has filed a voluntary petition in reorganization pursuant to Chapter 11 of the United States Bankruptcy Reform Act of 1978, as amended ("Code"), and the bankruptcy proceedings are presently pending in the U.S. Bankruptcy Court for the Eastern District of Missouri ("Court"), St. Louis, Missouri, Cause No. 91-45623-293 ("Reorganization Proceedings"), and

WHEREAS, Lender is willing to advance said funds from time to time, in its sole and absolute discretion upon each request for advance, only in accordance with the terms and conditions as set forth in this Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1.

LOAN

1.1 *The Revolving Line of Credit Loan.* Lender agrees to provide Borrower with a revolving line of credit in the maximum amount of Three Hundred Thousand Dollars ($300,000), the proceeds of which are to be used to provide Borrower with working capital needs and to fund a $100,000 retainer for Borrower's Court-appointed attorneys (the "Revolving Line of Credit Loan" or "Loan").

(1) Interest Rate/Term of Revolving Line of Credit Loan: The interest rate on the Revolving Line of Credit Loan will be five percent (5%) per annum over the Prime Rate as adjusted simultaneously with any change in such Prime Rate. The term of the Revolving Line of Credit Loan will be to

and including the Termination Date, and interest will be payable weekly.

(2) *Execution and Delivery of Promissory Note*: To evidence its obligation to repay the Revolving Line of Credit Loan, Borrower shall execute a· d deliver to Lender a Promissory Note (the "Revolving Note" or "Note"), with such terms and conditions as are set forth in *Exhibit B* attached hereto and incorporated herein by reference.

The Revolving Note is sometimes hereinafter referred to as the "Note."

(3) *Collateral for Revolving Line of Credit Loan*: To secure the Revolving Line of Credit Loan, Lender shall receive through an Order of the Bankruptcy Court a first, priority and perfected senior lien and security interest in all presently owned and hereafter acquired real and personal property, assets and rights of any kind and nature of Borrower, including all proceeds thereof, wherever located, and Borrower will deliver or cause to be delivered to Lender, *inter alia*, the following collateral (hereinafter collectively referred to as the "Revolving Line of Credit Loan Collateral" or "Collateral"):

(a) A first priority deed of trust or mortgage on certain real property and improvements constituting Hen House Restaurants located at the addresses described in *Exhibit C* attached hereto (hereinafter referred to as the "Restaurants"). The lien of the said deeds of trust and mortgage shall secure, *pari passu*, the 1987 Loan.

(b) A first priority security interest in all equipment, fixtures, machinery, inventory, general intangibles, leases, licenses, accounts receivable, and other personal property now owned or hereafter acquired by Borrower.

(c) The Unlimited Guaranty of William Dooner (the "Guarantor") in the form of *Exhibit D* attached hereto and made a part hereof by reference.

(d) A collateral pledge in recordable form of all leases and licenses held by Borrower, as lessee or licensee, concerning real estate locations for outdoor advertising signs owned by Borrower.

(e) A collateral assignment of all Borrower's right, title and interest in that certain management agreement, between Borrower and Omni Outdoor Management Company, Inc., Atlanta, Georgia, a Georgia corporation.

The documents described in subparagraph (3) above are hereinafter collectively referred to as the "Revolving Line of Credit Loan Collateral Documents."

The lien of the Revolving Line of Credit Loan Collateral shall be a first lien *pari passu* with the lien of the collateral for the 1987 Loan.

1.2 *The Closing*.

The Loan will be closed on such date (the "Closing Date") as Lender shall determine following Lender's receipt of all documents, certificates, collateral and such other items

as required by this Agreement, but in any event no later than September 20, 1991, otherwise this Agreement shall terminate.

1.3 *Expenses.*

Whether or not the Loan contemplated by this Agreement shall be consummated, the Borrower will pay all reasonable expenses of the Lender incident to the transactions contemplated by this Agreement or in connection with any modification, amendment, alteration, or enforcement of this Agreement or the Note, including, but not limited to, the Lender's out-of-pocket expenses and the fee charges and disbursements of its counsel. The obligations of the Borrower under this paragraph shall survive the payment in full of the Note.

SECTION 2.

REPRESENTATIONS AND WARRANTIES

2.1 *Subsidiaries.*

The Borrower represents to Lender that it has no Subsidiaries and warrants and covenants to Lender that it will not acquire, create or otherwise have any Subsidiaries during the term of the Loan (or any extensions or renewals thereof) without the express written consent of the Lender.

Exhibit E to this Agreement correctly sets forth (1) the state in which the Borrower is incorporated, (2) the state or states in which the Borrower conducts its businesses, and

(3) a list of the stock of each class of the Borrower, showing in each case the number of shares of stock of each class outstanding and the shares of each class owned as of the Closing Date by the Borrower. The shares of stock listed in *Exhibit E* as owned by the Borrower have been duly issued and are fully paid and nonassessable, and are so owned as of the date of this Agreement free and clear of any mortgage, lien, pledge, charge, security interest or other encumbrance.

2.2 *Corporate Organization and Authority.*

The Borrower is duly and validly organized and existing corporation in good standing under the laws of its jurisdictions of incorporation and is duly licensed or qualified and in good standing as a foreign corporation in all other jurisdictions where the ownership or leasing of property or the nature of business transacted makes such qualification necessary, and is entitled to own its properties and assets, and to carry on its business, as, and in the places where, such properties and assets are now owned or operated or such business is now conducted or presently proposed to be conducted. The Borrower has made payment of all franchise and similar taxes in its jurisdiction of incorporation, and in all jurisdictions in which it is qualified as a foreign corporation, insofar as such taxes are due and payable at the date of this Agreement, except for any such taxes the validity of which is being contested in good faith and for which proper reserves have been set aside on the books of the Borrower.

2.3 *Business, Property and Indebtedness.*

Exhibit F to this Agreement correctly sets forth a brief description of the business (as conducted and presently

proposed to be conducted) and properties (including leaseholds and capitalized lease obligations) of the Borrower and correctly lists all of the outstanding Indebtedness for borrowed money of the Borrower.

2.4 *Financial Statements.*

The consolidated balance sheets of the Borrower and its Subsidiaries for each of the last three fiscal years of the Borrower ending September 30, the consolidated profit and loss and surplus statements of the Borrower and its Subsidiaries for each of such fiscal years, all certified by Price Waterhouse, independent certified public accountants, and the consolidated balance sheets of the Borrower and its Subsidiaries as of September 30, 1991, and the consolidated profit and loss and surplus statements of the Borrower and its Subsidiaries for the six month period then ended, certified by a principal financial officer of the Borrower, copies of all of which balance sheets and statements have heretofore been delivered to Lender, were prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, are correct and complete (subject, in the came of such interim statements, to normal year-end audit adjustments) and fairly present the consolidated financial position and results of operations of the Borrower and its Subsidiaries for each such fiscal year (and for such interim period).

2.5 *Full Disclosure.*

The financial statements referred to in Section 2.4 hereof do not, nor does this Agreement, or any written statement

furnished by the Borrower to the Lender in connection with the negotiation or making of the Loans, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. There is no fact which the Borrower has not disclosed to the Lender in writing which materially and adversely affects nor, so far as the Borrower can now foresee, is reasonably likely to prove to affect materially and adversely the business, operations, properties, prospects, profits or condition (financial or otherwise) of the Borrower or the ability of the Borrower to perform this Agreement.

2.6 *Pending Litigation.*

There are no actions, suits, investigations or proceedings pending or, to the knowledge and belief of the Borrower, threatened against or affecting the Borrower or the business, operations, properties, prospects, profits, or condition (financial or otherwise) of the Borrower before or by any governmental department, commission, board, regulatory authority, bureau, agency, or instrumentality, domestic, foreign, federal, state or municipal (herein collectively "governmental agency"), or any court, arbitrator or grand jury, which is reasonably likely to result in any material adverse change in the business, operations, properties, prospects, profits or condition (financial or otherwise) of the Borrower or in the ability of the Borrower to perform this Agreement, the Note or the Collateral Documents, except for the Reorganization Proceedings.

2.7 *Title to Properties; No Title Retention Agreements.*

The Borrower has good and marketable fee title to all of the Collateral and good and marketable title to all other property and assets reflected in the latest audited balance sheet referred in Section 2.4 or purported to have been acquired by the Borrower subsequent to such date, except property and assets sold or otherwise disposed of subsequent to such date in the ordinary course of business. Except for the interests of those creditors described in *Exhibit G* attached hereto and made a part hereof by reference all property and assets of any kind (real or personal, tangible or intangible) of the Borrower are free from any encumbrance, and are free from any other liens, encumbrances or defects in title which are substantial in amount, or which affect or impair the operations of the business of the Borrower. No financing statement under the Uniform Commercial Code which names the Borrower has been filed and the Borrower has not signed any financing statement or any security agreement authorizing any secured party thereunder to file any such financing statement.

None of the assets or property, the value of which is reflected in the latest audited consolidated balance sheet referred to in Section 2.4, is held by the Borrower as lessee under any lease (excluding capitalized lease obligations) or its conditional vendee under any conditional sales contract or other title retention agreement. The Borrower enjoys peaceful and undisturbed possession under all of the leases and licenses under which it is operating, none of which contains any unusual or burdensome provisions that will materially impair or adversely affect the operations of the

Borrower. All of such leases and licenses are valid, subsisting and in full force and effect and none of such leases is in default (in any material respect) and no event has occurred which with the passage of time or the giving of notice, or both, would constitute a default under any thereof.

2.8 *Patents and Trademarks.*

The Borrower possesses all patents, patent rights or licenses, trademarks, trademark rights, trade names, trade name rights, and copyrights which are required to conduct its business as now conducted without known conflict with the rights of others.

2.9 *Transaction is Legal and Authorized.*

The borrowing of the principal amount of the Loan and compliance by the Borrower with all of the provisions of this Agreement, the Collateral Documents and the Note are within the corporate powers of the Borrower.

This Agreement, the Note and the Collateral Documents have been duly authorized, executed and delivered and upon the entry of the Court Order (hereinafter defined) are the legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms.

2.10 *No Defaults or Restrictions.*

Neither the execution and delivery of this Agreement, the Collateral Documents, the consummation of the transactions contemplated hereby or thereby, nor compliance

with their respective terms and conditions and with the terms and provisions of the Note, will conflict with or result in a breach of, or constitute a default under, any of the terms, obligations, covenants, conditions or provisions of any corporate restriction or of any indenture, mortgage, deed of trust, pledge, bank loan or credit agreement, corporate charter, bylaws or any other agreement or instrument to which the Borrower is now a party or by which it or its properties may be bound or affected, or, upon entry of the Court Order (hereinafter defined) any judgment, order, writ, injunction, decree or demand of any court, arbitrator, grand jury or any governmental agency or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property or asset of the Borrower or any Subsidiary under the terms or provisions of any of the foregoing.

2.11 *Governmental Consent.*

Other than the Court Order (hereinafter defined), no governmental orders, permissions, consents, approvals or authorizations are required to be obtained and no registrations or declarations are required to be filed in connection with the execution and delivery of this Agreement, the Collateral Documents or the Note.

2.12 *Taxes.*

The Borrower has filed all United States income tax returns and all state and municipal tax returns which are required to be filed, and have paid, or made provision for the payment of, all taxes which have become due pursuant

to said returns or pursuant to any assessment received by the Borrower, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. The United States income tax liability of the Borrower has been paid for all taxable years up to and including the taxable year ending September 30, 1990.

2.13 *Use of Proceeds.*

The Borrower will apply the proceeds from the Loans as provided in Section 1.1 hereof. The Borrower does not own any "margin security" as such term is defined in Regulation G of the Board of Governors of the Federal Reserve System, as amended, except margin securities owned or which may be acquired by the Borrower which do not and would not in the aggregate constitute a substantial part of the assets of the Borrower. The Borrower will not use any part of the proceeds from the Loans to be made under this Agreement (1) directly or indirectly, to purchase or carry any such security or to reduce or retire any Indebtedness originally incurred to purchase any such security within the meaning of such Regulation T, U or X of such Board, or (2) for any other purpose not permitted by Section 7 of the Securities Exchange Act of 1934, as amended, or any of the rules and regulations respecting the extension of credit promulgated thereunder.

2.14 *Compliance with Law.*

The Borrower has, to the best of the knowledge and belief of the Borrower, complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign

government or any instrumentality or agency thereof, having jurisdiction over the conduct of business or the ownership of its properties.

2.15 *Restrictions on Borrower.*

The Borrower is not a party to, or is bound by, any contract or agreement or instrument, or subject to any charter or other corporate restriction, materially and adversely affecting its business, property, assets, operations or condition, financial or otherwise.

2.16 *ERISA.*

The Borrower represents to Lender that it neither has nor maintains any employee pension benefit plan or other pension or retirement plan. Borrower covenants with Lender that no such plan will be created by or on behalf of Borrower without Lender's prior written consent. Such consent may be conditioned upon receipt by Lender of an amendment to this Agreement containing such covenants, representations and warranties as Lender deems necessary.

SECTION 3.

CLOSING CONDITIONS

Lender's obligation to make the Loan provided for in Section 1.1 shall, unless waived in writing by Lender, be subject to the performance by the Borrower prior to or at the Closing Date of all of its agreements theretofore to be performed under this Agreement, to the accuracy of its

representations and warranties contained in this Agreement, and to the satisfaction, prior to or concurrently with the closing of the Loan, of each of the following further conditions:

3.1 *Collateral and Collateral Documents.*

Lender is hereby granted, to the extent not heretofore granted to Lender, a first priority and perfected senior lien and security interest in all presently owned and hereafter acquired real and personal property, assets and rights of any kind and nature of Borrower, including all proceeds thereof, wherever located. The Collateral Documents, the Note and related certificates, and other documents as may be reasonably required by the Lender, in form and substance reasonably satisfactory to the Lender and its counsel, shall have been executed in proper form by such persons or parties as the Lender may request and delivered to the Lender.

3.2 *Real Estate and Other Property-Related Documents.*

Upon request by the Lender, the Borrower shall deliver to the Lender:

(a) An endorsement to the existing lender's title insurance policies with respect to the first mortgages upon the Restaurants now held by Lender, updating the coverage thereof to a current date and containing only such exceptions as are acceptable to Lender.

(b) Amendments, in proper and recordable form, to the existing first mortgages held by Lender upon the

properties described in *Exhibit C*, extending the first lien thereof to secure the Loan *pari passu* with the 1987 Loan.

(c) A pledge of the leases and licenses held by Borrower, as lessee or licensee, concerning real estate locations for the outdoor advertising signs owned by Borrower.

(d) A security agreement, guaranty, collateral assignment of leases and rents, and other documents necessary or appropriate to evidence and perfect all of the Collateral securing the Loan.

3.3 *Insurance Policies.*

The following insurance policies, or certificates of the existence of such policies shall be delivered to the Lender and each such policy (except the general liability policy) shall name the Lender as a lost payee and mortgagee and shall provide that such policy shall not be canceled or coverage reduced without at least 20 days prior notice to the Lender:

(A) A comprehensive general liability insurance policy in amounts satisfactory to the Lender against claims and liabilities for injury or damage to persons or property relating to the Collateral (excluding the billboard structures). Coverage for personal injury and for property damage shall be in amounts acceptable to the Lender.

(B) In the event that any of the Collateral is located within a flood plain, flood insurance in an amount equal to the full replacement value of such Collateral.

3.4 *Financial Statements.*

Copies of the audited financial statements of the Borrower as of September 30, 1991, and the unaudited interim monthly statement dated _____, 1991, together with a certificate of the chief financial officer of the Borrower to the effect that such audited financial statements of the Borrower are true and correct and fairly present, in conformity with generally accepted accounting principles, consistently applied, the financial position of the Borrower as of such dates and its income, results of operations and changes in its financial position for such dates and that as of the date of such certificate there are no undisclosed liabilities of the Borrower not reflected in the audited financial statements.

3.5 *UCC Financing Statements.*

The filing or recording, as determined by the Lender, of Uniform Commercial Code financing statements in a form acceptable to the Lender setting out the security interests of the Lender with respect to the Collateral granted under the Collateral Documents.

3.6 *Payment of Fees and Expenses.*

Borrower shall pay, not later than the Closing Date of the Loan, all costs and expenses incurred by the Lender in connection with the Loan, including, but not limited to, legal fees and expenses for Lender's counsel and recording and filing fees. Borrower's obligation to pay such costs and expenses shall be in addition to Borrower's payment of other

sums to Lender pursuant to the terms hereof, and shall be payable irrespective of whether the Loan closes.

3.7 *Corporate Documentation.*

Lender shall have received certified copies of the Borrower's Articles of Incorporation and By-Laws and certified copies of all corporate action taken by the Borrower to authorize the execution, delivery and performance of this Agreement, the Note and the Collateral Documents, and such other papers as the Lender may reasonably require.

3.8 *Court Order.*

The Court shall have entered an emergency Order approving this financing ("Court Order"), in substantially the form attached as *Exhibit H* and incorporated herein by reference. To the extent this Agreement and the Court Order are inconsistent, the terms of the Court Order shall control.

3.9 *Conditions Precedent to All Advances; Application for Advance.*

The obligation of Lender to make each advance on the Revolving Line of Credit Loan (including the initial advance) shall be subject to the further conditions precedent that on the date of such advance (i) the Lender shall have agreed, in its sole and absolute discretion, to extend the advance to Borrower (and, if Lender concludes not to make such advance, it will notify Borrower in writing within two (2) business days of such conclusion), (ii) the Court Order shall be in full force and effect and shall not have been modified

or amended in any respect without the written consent of Lender, and (iii) the following statements shall be true and Lender shall have received a certificate and application signed by a duly authorized officer of the Borrower, dated the date of such advance, stating that:

(A) The representations, warranties and covenants contained in Sections 2 and 4 are correct on and as of the date of such advance as though made on and as of such date,

(B) No event has occurred and is continuing, or would result from such advance, which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be given or time elapse or both, and

(C) The proceeds of the particular request for advance will be used by Borrower only for the purposes stated therein.

SECTION 4.

BORROWER BUSINESS COVENANTS

AFFIRMATIVE COVENANTS. The Borrower covenants and agrees that so long as the Note shall be outstanding:

4.1 *Payment of Taxes and Claims.*

The Borrower will duly pay and discharge, as the same become due and payable, all taxes, assessments and governmental and other charges, levies or claims levied or imposed, which are, or which if unpaid might become, a lien or charge upon the franchises, properties, assets, earnings

or business of the Borrower; provided, however, that nothing contained in this paragraph shall require the Borrower to pay and discharge, or cause to be paid and discharged, any such tax, assessment, charge, levy or claim so long as the Borrower in good faith shall contest the validity thereof and shall set aside on its books adequate reserves with respect thereto.

4.2 *Maintenance of Corporate Existence and Properties.*

(A) *Corporate Existence and Rights.* The Borrower will at all times do or cause to be done all things necessary to maintain, preserve and renew its corporate existence and its rights, patents and franchises, and comply with, all related laws applicable to the Borrower in such manner as counsel shall advise.

(B) *Property.* The Borrower will at all times maintain, preserve, protect and keep, or cause to be maintained, preserved, protected and kept, its property, including, but not limited to, the Restaurants and all of Borrower's property constituting Collateral, in good repair, working order and condition and, from time to time, will make, or cause to be made, all repairs, renewals, replacements, extension, additions, betterments and improvements to its property as are needful and proper, so that the business carried on in connection therewith may be conducted properly and efficiently at all times.

(C) *Insurance.* At Borrower's expense, keep, or cause to be kept, (i) all of Borrower's property in which Lender has a lien or security interest (except for the billboards,

provided that worker's compensation insurance with respect to the billboards shall be required) insured against such risks as are satisfactory to Lender, and (ii) liability insurance in a minimum amount of $3,000,000, such insurance to be issued by companies acceptable to Lender and in amounts as the Lender may require and sufficient to satisfy all coinsurance requirements covering such property. Such insurance policies (except for the general liability policy) shall name the Lender as loss payee and mortgagee and shall provide that such policies shall not be canceled or coverages reduced without at least twenty (20) days prior written notice to the Lender. In the event of acquisition of additional insurable collateral, Borrower shall cause such insurance coverage to be increased or amended in such manner and to such extent as prudent business judgment would dictate. If Borrower shall at any time or tines hereafter fail to obtain and/or maintain any of the policies of insurance required herein, or fail to pay any premium in whole or in part relating to such policies, Lender may, but shall not be obligated to, obtain and/or cause to be maintained insurance coverage with respect to such Collateral, including, at Lender's option, the coverage provided by all or any of the policies of Borrower and pay all or any part of the premium therefor, without waiving any Default by Borrower, and any sums so disbursed by Lender shall be additional loans to Borrower by Lender payable on demand. Lender shall have the right to settle and compromise any and all claims under any of the policies required to be maintained by Borrower hereunder and Borrower hereby appoints Lender as its attorney-in-fact, with power to demand, receive, and receipt for all monies payable thereunder, to execute in the name of Borrower or Lender or both any proof of loss, notice, draft, or other instruments in

connection with such policies or any loss thereunder and generally to do and perform any and all acts as Borrower, but for this appointment, might or could perform.

(D) *Financial Records*. The Borrower will keep true books of records and account in which full and correct entries will be made of all its business transactions, and will reflect in its financial statements adequate accruals and appropriations to reserves, all in accordance with generally accepted accounting principles.

(E) *Compliance with Law*. The Borrower will comply with each and every term and condition of the Court Order and all applicable statutes, rules, regulations, orders and restrictions of the United States of America, foreign countries, states and municipalities, and of any governmental department, commission, board, regulatory authority, bureau, agency, and instrumentality of the foregoing, and of any court, arbitrator or grand jury, in respect of the conduct of its business and the ownership of its properties.

4.3 *Payment of Loan and Maintenance of Office*.

The Borrower will maintain an office at Chesterfield, Missouri, where notices, presentations and demands to or upon the Borrower in respect of the Loan and Note may be given or made.

The Borrower will punctually pay or cause to be paid the principal of, and premium, if any, and interest on, the Loan at the times and places and in the manner specified in this Agreement and in the Note.

4.4 *Further Action*.

The Borrower will take such further action as shall be necessary or appropriate to consummate and document fully the Loan as provided herein and as provided in the Court Order.

4.5 *Best Efforts*.

The Borrower agrees to undertake and diligently pursue its best efforts to develop and enhance the segment of its business concerning the rental of outdoor advertising signs and, to that end, to develop and submit to Lender its detailed business plan providing for such development and enhancement.

4.6 *Projections and Budget*.

The Borrower agrees to comply with the Projections (hereinafter defined) submitted to Lender, and further agrees that the use of proceeds from any advance made by Lender to Borrower shall be used by Borrower only for the purpose stated in the particular request for advance and only for a purpose that is consistent with the expenditures delineated in the Budget (hereinafter defined).

4.7 *Tax Refunds and Extraordinary Sale Proceeds*.

In the event the Borrower receives proceeds from the sale of any of its assets other than a sale in the ordinary course of its business, or any refund of state or federal income tax obligations, Borrower shall promptly notify Lender and shall

immediately apply said proceeds or refund to the reduction of the 1987 Loan.

NEGATIVE COVENANTS. Without the prior written consent of Lender, the Borrower covenants and agrees that so long as the Note shall be outstanding:

4.8 *Disposal of Stock of Borrower.*

The Borrower will not sell, assign, transfer, redeem, retire or otherwise dispose of more than fifty percent (50%) of any shares of stock of any class of the Borrower, without the prior written consent of the Lender. In addition, Borrower agrees not to permit any shareholder to sell, assign, transfer, redeem, retire or otherwise dispose of more than fifty percent (50%) of any shares of stock of any class of the Borrower, including, but not limited to, any shares owned by the Guarantor.

In addition, and not in limitation of the foregoing, William J. Dooner shall covenant in the Guaranty Agreement of even date herewith, not to sell, assign, transfer, or otherwise dispose of any stock of any class of Borrower now held or hereafter acquired either directly or indirectly, by William O. Dooner.

4.9 *Sale of Assets; Merger.*

(A) *Sale of Assets.* Other than in the ordinary course of its business, the Borrower will not sell, lease, transfer or otherwise dispose of, in any transaction or series of related transactions, all or any substantial part of its assets, whether

now owned or hereafter acquired. Borrower will also not sell or assign or lease any restaurant asset individually.

(B) *Merger of Consolidation.* The Borrower will not consolidate with or merge into any other corporation or permit any other corporation to merge into the Borrower.

4.10 *Sale and Leaseback.*

The Borrower shall not, after the sale of any property owned by the Borrower, rent or lease such property or substantially identical property.

4.11 *Liens and Encumbrances.*

The Borrower will not create or assume, or permit to exist, any mortgage, lien, charge or encumbrance on, pledge of, or other security interest in, any property or assets of any kind (real or personal, tangible or intangible) or acquire or agree to acquire any such property or assets under conditional sale agreements or other retention agreements, or sell any such property or assets subject to an understanding or agreement, contingent or otherwise, to repurchase such property or assets; (including sales of accounts receivable with recourse to the Borrower), or file or permit the filing of any financing statement under the Uniform Commercial Code or other similar notice under any other similar statute.

4.12 *Limitation on Loan.*

The Borrower shall not advance or lend any additional monies, extend credit, or property to any officer, insider,

Affiliate, stockholder or other related entities or related individuals or guaranty, assume, endorse, or otherwise become responsible for, directly or indirectly, obligations of others throughout the term of the Loan and any renewals thereof.

4.13 *Dividends.*

Borrower will not pay or declare any dividends or authorize any distribution of any stock of the Borrower or make any payment on account of the purchase, acquisition, redemption, or other retirement of any shares of stock; provided, however, if Borrower elects to report its income as an S Corporation under the Internal Revenue Code of 1986, as amended, dividends and other payments to shareholders shall not exceed the income tax liability incurred from the income that is reported to such shareholders from the Borrower.

4.14 *Transactions of Affiliates.*

The Borrower will not enter into any transaction including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any Affiliate except in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's business and upon terms found by the Board of Directors to be fair and reasonable and no less favorable to the Borrower than would obtain in a comparable arm's-length transaction with a Person not an Affiliate.

4.15 *Management.*

The Borrower will not permit any voluntary change in the executive management of Borrower as constituted on the date hereof, and will notify Lender promptly upon a change in executive management.

4.16 *Minimum Earnings.*

The Borrower will achieve minimum earnings for the periods set forth below. For the purposes of this Section 4.16, the term "minimum earnings" means net income from ordinary operations of Borrower but before application of the expenses of interest on borrowed money, income taxes, and depreciation. The calculation of minimum earnings shall be in the manner that is consistent with the calculation utilized by Borrower in preparing the Budget and the Projections.

Period	Minimum Earnings
September, 1991	$50,000.00
October, 1991	$10,000.00
November, 1991	$ 1.00

SECTION 5.

INFORMATION AS TO BORROWER

5.1 *Financial and Business Information.*

So long as any Loan is outstanding, the Borrower will deliver to the Lender:

(A) *Monthly Financial Statements.* As soon as reasonably possible, and in any event within 20 days after the close of each month, (1) the balance sheets of the Borrower, as of the end of such month, setting forth in the case of the balance sheets, in comparative form the corresponding figures for the corresponding month of the preceding fiscal year, and (2) the profit and loss and surplus statements of the Borrower for such month and for the portion of the fiscal year ended with such month, setting forth in the case of the statements, in comparative form the corresponding periods of the preceding fiscal year, all in reasonable detail and certified by a principal financial officer of the Borrower, subject to normal year-end audit adjustments.

(B) *Annual Reports and Financial Statements.* As soon as reasonably possible, and in any event within 120 days after the close of each fiscal year of the Borrower (1) the balance sheets of the Borrower as at the end of fiscal year, setting forth, in the case of the balance sheets, in comparative form, the corresponding figures at the end of the preceding fiscal year, and (2) the profit and loss and surplus statements of the Borrower for such fiscal year, setting forth, in the

case of the statements, in comparative form, the corresponding figures for the previous fiscal year. Such balance sheets and statements shall be prepared in reasonable detail, in accordance with good accounting practice, and the statements shall be accompanied by a report and opinion of independent public accountants of recognized standing selected by the Borrower, which report and opinion shall be prepared in accordance with generally accepted auditing standards relating to reporting and shall include a statement that, in making the audit necessary for the certification of such financial statements and such report, such accountants have obtained no knowledge of any Event of Default under the Loan, Note or Collateral Documents (after first receiving certificates from Borrower and Lender in accordance with standard accounting practices) or under any other evidence of Indebtedness, or of any event which, with notice or lapse of time, or both, would constitute an Event of Default under this Agreement, the Loan, Note, or Collateral Documents, or under any other evidence of Indebtedness or, if in the opinion of such accountants, any such Event of Default or other event shall exist, shall include a statement as to the nature and status of such event. Such report shall also include such other reports, schedules or information as may be furnished to the Board of Directors of the Borrower in connection with such audit.

(C) *Special Reports of Accountants.* Promptly after the receipt thereof by the Borrower, copies of any detailed audit reports submitted to the Borrower by independent accountants in connection with the accounts, books, or any audit of the Borrower.

(D) *Notice of Default or Event of Default.* Immediately upon becoming aware of the existence of any condition or event which constitutes a default or an Event of Default a written notice specifying the nature and period of existence thereof and what action the Borrower is taking or proposes to take with respect thereto.

(E) *Projections.*

Cash flow projections ("Projections") prepared by Borrower showing projected cash receipts and cash expenditures, together with such additional relevant information and detail as requested by Lender, for the one year period commencing September 1, 1991, showing projections on a monthly basis. The Projections are attached as *Exhibit I.*

(F) *Budget.*

A budget ("Budget") prepared by Borrower showing budgeted income and expenses on an accrual basis, together with such additional relevant information and detail as requested by Lender, for the one year period commencing September 1, 1991, showing budgeted income and expenses on a monthly basis. The Budget is attached as *Exhibit J.*

(G) *Additional Information.* Such other data and information as from time to time may be reasonably requested by the Lender.

The Lender may deliver copies of any of the financial statements furnished to Lender pursuant to Section 5.1, as

well as copies of any other information or reports furnished to it pursuant to this Section 5.1 or any other provisions of this Agreement to any regulatory body, or to any agency, authority or commission, to whose jurisdiction the Lender may be subject.

5.2 *Officers' Certificates.*

Compliance Certificate. Not later than the time of delivery of the statements required to be furnished pursuant to Section 5.1(B), a certificate signed by the President or one of the Vice Presidents and the Treasurer or one of the Assistant Treasurers of the Borrower stating that a review of the activities of the Borrower during such fiscal year has been made under their supervision with a view to determining whether during such fiscal year the Borrower performed and observed all of its obligations under this Agreement, the Collateral Documents and the Note, and either (1) stating that to the best of their knowledge the Borrower had during such fiscal year performed and observed each covenant and condition of this Agreement, the Collateral Documents and the Notes applicable to them or (2), if the Borrower has not performed and observed such covenants and conditions, specifying all such Defaults and their nature and status.

5.3 *Inspection.*

The Borrower will permit any of the Lender's representatives, at the Lender's expense, to visit and inspect any of the properties of the Borrower, to examine all its books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss its affairs, finances

and accounts with its officers, employees and independent public accountants (and by this provision the Borrower authorizes said accountants to discuss the finances and affairs of the Borrower) all at such reasonable times and as often as may be reasonably requested.

SECTION 6.

EVENTS OF DEFAULT

6.1 *Nature of Events.*

An "Event of Default" shall exist if any of the following occurs:

(A) Any representation or warranty made herein or in any documents under which the Loan are made, including, but not limited to this Agreement, the Collateral Documents or the Note, shall prove to have been incorrect, or shall be breached, in any material respect; or

(B) Default in the payment when due of any principal or interest due on the Loan; or

(C) Default by the Borrower or the Guarantor in the performance of any provision, covenant or agreement specified herein, the Note or in any Collateral Documents; or

(D) A final judgment or judgments for the payment of money in excess of $50,000 in the aggregate shall have been rendered against the Borrower or the Guarantor and the same

shall have remained unappealed and unsatisfied and in effect, without stay of execution, for any period of sixty (60) days, provided, however such final judgment shall not constitute a default hereunder if Borrower or the Guarantor posts a bond or other form of security in an amount satisfactory to the Lender or such judgment or judgments are fully insured; or

(E) The Guarantor shall: (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or its property; (ii) be unable, or admit in writing inability, to pay its debts as they mature; (iii) make a general assignment for the benefit of creditors; (iv) file a petition for an order of relief, or have such petition filed with respect to Guarantor in any court; or (v) file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization, arrangement or insolvency proceeding; or action shall be taken by them for the purpose of affecting any of the foregoing; or

(F) An order, judgment or decree shall be entered against the Guarantor without its application, approval or consent thereof, by any court or governmental agency of competent jurisdiction, approving a petition seeking reorganization of the Guarantor or appointing a receiver, trustee, liquidator or the like of the Guarantor or of all or a substantial part of its assets, and, if such order, judgment or decree is being contested in good faith, the same shall have continued unstayed and in effect for any period of sixty (60) consecutive days; or

(G) If any of the restaurant assets, other Collateral or any part thereof, is sold (other than in the ordinary course of business), transferred, leased, conveyed, hypothecated, pledged or otherwise encumbered (including, without limitation, encumbrances resulting from secondary financing) without the prior written consent of the Lender; or

(H) A material negative variance from the Projections or the Budget is permitted to occur; or

(I) An event of default in the 1987 Loan Agreement (except for noncompliance with covenants therein related to Borrower's financial condition); or

(J) The termination of the 1987 Loan Agreement or any guaranty thereunder other than by payment in full of all liabilities to Lender thereunder; or

(K) The conversion of the Reorganization Proceeding to a case under Chapter 7 of the Code; or

(L) The dismissal of the Reorganization Proceeding as a Chapter 11 case or any subsequent case under Chapter 7 of the United States Bankruptcy Code; or

(M) A violation of any provision of the Court Order; or

(N) If the Court Order shall be vacated, reversed, modified, stayed or amended in any respect; or

(O) If the Court enters an order approving a disclosure statement in connection with a plan of reorganization that does not provide for payment in full in cash of all of the indebtedness of Borrower to Lender (including indebtedness evidenced by the 1987 Loan Agreement and this Agreement) upon the effective date of such plan, unless the Lender agrees in writing to other treatment; or

(P) The appointment of a trustee for Borrower or the assets of Borrower.

6.2 *Remedies.*

(A) In case any one or more of the Events of Default specified above in this Section 6 shall have happened and be continuing, the Lender may proceed, subject to compliance with the terms of the Court Order, to protect and enforce its rights "either by suit in equity and/or by action at law, or by other appropriate proceedings, whether for the specific performance (to the extent permitted by applicable law or equitable principles) of any covenant or agreement contained in this Agreement, the Collateral Documents or the Note, or in aid of the exercise of any power granted in this Agreement, the Collateral Documents or the Note, or may proceed to enforce the payment of the Note or to enforce any other legal or equitable right of the Lender.

(B) In particular, without limiting the generality of the foregoing, the right to declare the entire principal of, and all interest accrued on, the Loan then outstanding to be, and such Loans, and the Note evidencing the Loan shall thereupon become, forthwith due and payable, without any

presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, and the Borrower will forthwith pay to the Lender the entire outstanding principal of, and interest accrued on, the Loan evidenced by the Note.

(C) In the event of the failure of Borrower to make the payment of money to Lender when due as provided in the Note or this Agreement, Lender, in its discretion, may advance the amounts due and endorse the Note to reflect such advance as an advance to Borrower under the Note, all without waiving any event of default on the part of the Borrower.

(D) No course of dealing on the part of the Lender or any delay or failure on the part of such holder to exercise any right shall operate as a waiver of such right or otherwise prejudice Lender's rights, powers and remedies. If the Borrower fails to pay when due the principal of, or interest on, the Loan, or fails to comply with any provision of this Agreement, the Collateral Documents or the Note, the Borrower will pay to the Lender, to the extent permitted by law, such further amounts as shall be sufficient to cover the cost and expenses, including but not limited to reasonable attorney's fees, incurred by the Lender in collecting any sums due on or on account of the Loan or in otherwise enforcing any of its rights.

SECTION 7.

INTERPRETATION OF THIS AGREEMENT

7.1 *Terms Defined.*

As used in this Agreement, the following terms have the respective meanings set forth below:

"Affiliate" shall mean any Person (other than a Subsidiary) (1) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Borrower, (2) 5% or more of the equity interest of which is held beneficially or of record by the Borrower or a Subsidiary. The term "control" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Board of Directors" shall mean either the board of directors of the Borrower or any duly authorized committee of that board.

"Indebtedness" shall mean and include, without duplication, (1) all items which, in accordance with good accounting practice, would be included on the liability side of a balance sheet as at the date as of which Indebtedness is to be determined excluding capital stock, surplus, capital and earned surplus, (2) all Indebtedness secured by any mortgage, pledge, security interest or lien existing on property owned subject to such

mortgage, pledge, security, interest or lien whether or not the Indebtedness secured thereby shall have been assumed, (3) all amounts representing the capitalization of rentals in accordance with good accounting practice, and (4) all guarantees, endorsements and other contingent obligations, including without limitation all Indebtedness guaranteed, directly or indirectly, in any manner, or in effect guaranteed or supported, directly or indirectly, through an agreement, contingent or otherwise, (a) to purchase or sell services at prices or in amounts designed to enable the debtor to make payment of the Indebtedness or to assure the owner of the Indebtedness against loss, or (b) to supply or advance funds to or in any other manner invest in the debtor, provided, however, that such term shall not mean and include any Indebtedness in respect to which moneys sufficient to pay and discharge the same in full (either on the expressed date of maturity thereof or on such earlier: date as such Indebtedness may be duly called for redemption and payment) shall be deposited with a depositary, agency or trustee in trust for the payment thereof.

"Person" shall include any individual, a corporation, a partnership, or a government, foreign or domestic, or any agency or political subdivision thereof.

"Prime Rate" meant the standard publicly announced prime rate of interest of the Lender.

"Subsidiary" shall mean any corporation more than 10% of the Outstanding Voting Stock of which is at the time

directly or indirectly owned by the Borrower, or by one or more of its Subsidiaries, or by the Borrower and one or more of its Subsidiaries and which has substantially all of its assets located within, and operates substantially entirely within, the United States of America or Canada.

"Termination Date" means the earliest of (i) three (3) months from the date hereof, (ii) the substantial consummation (as such term is defined in Section 1102(2) of the Code) of a plan of a reorganization of the Borrower, or (iii) the effective date of any plan of reorganization of the Borrower.

"Voting Stock" means common stock of any class or classes of a corporation the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

7.2 *Directly or Indirectly.*

Where any provision of this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

7.3 *Governing Law.*

This Agreement and the Loans shall be governed by, and construed and enforced in accordance with the law of Illinois.

7.4 *Section Headings and Construction.*

The titles of the Sections appear as a matter of convenience only and shall not affect the construction hereof. Each covenant contained in this Agreement shall be construed (absent an express contrary provision therein) as being independent of each other covenant contained herein and compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any or all other covenants.

SECTION 8.

AMENDMENT AND WAIVER

No term, covenant, agreement or condition of this Agreement may be amended, or compliance therewith waived (either generally or in a particular instance and either retroactively or prospectively), unless Borrower shall have obtained the agreement or consent in writing of the Lender.

SECTION 9.

MISCELLANEOUS

9.1 *Notices.*

(A) *Method; Address.* All communications under this Agreement shall be in writing, shall be personally delivered or deposited into the United States Mail (first class, registered or certified mail), postage prepaid, and shall be addressed,

(1) if to the Lender, at 10950 Lincoln Trail, Fairview Heights, Illinois 62208, Attention: Senior Vice President, or at such other address as the Lender shall have furnished to the Borrower in writing, or

(2) if to the Borrower, at 400 Chesterfield Center, Suite 650, St. Louis, Missouri 63017, or at such other address as the Borrower shall have furnished to the Lender in writing.

(B) *When Given.* Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed. Any notice so addressed and otherwise delivered shall be deemed to be given when actually received by the addressee.

9.2 *Duplicate Originals.*

Two or more duplicate originals of this Agreement may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument.

9.3 *Reproduction of Documents.*

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, (b) documents received by the Lender at the closing of the Loans (except the Note), and (c) financial statements, certificates and other information previously or hereafter furnished to

the Lender, may be reproduced by the Lender by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. The Borrower agrees and stipulates that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

9.4 *Survival*

All warranties, representations, and covenants made by the Borrower herein or in any certificate or other instrument delivered by it or on its behalf under this Agreement shall be considered to have been relied upon by the Lender and shall survive the making of the Loans and delivery to the Lender of the Notes, regardless of any investigation made by the Lender or on its behalf. All statements in any such certificate or other instrument shall constitute warranties and representations by the Borrower hereunder.

9.5 *Successors and Assigns.*

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties. The provisions of this Agreement are intended to be for the benefit of any and all holders, from time to time, of the Notes and shall be enforceable by any such holder, whether or not an express assignment to such holder of rights under this Agreement has been made by the Lender or its successors or assigns.

9.6 *Non-Waiver.*

No course of dealing between the Borrower and the Lender or any other holder from time to time of the Note or any delay of failure on the part of the Lender or any other holder from time to time of the Note hereof in exercising any rights hereunder shall operate as a waiver of any rights of any holder, except to the extent expressly waived in writing by such holder.

IN WITNESS WHEREOF, the Borrower and the Lender have caused this Agreement to be executed as of the date and year first above written.

HEN HOUSE INTERSTATE, INC.,
A DELAWARE CORPORATION,
DEBTOR AND DEBTOR-IN-
POSSESSION, BORROWER

By:_____
Title:_____

LANDMARK BANK OF ILLINOIS,
LENDER

By:_____
Title:

EXHIBIT A

List of Restaurants Mortgaged to Lender

1. Champaign County, Illinois
2. Dewitt County, Illinois
3. Ford County, Illinois
4. Jackson County, Missouri
5. Laurel County, Kentucky
6. Madison County, Illinois
7. Marion County, Illinois
8. McLean County, Illinois
9. Morgan County, Indiana
10. Muncie (Delaware County), Indiana
11. St. Clair County, Illinois
12. Washington County, Illinois
13. Will County, Illinois

EXHIBIT B

PROMISSORY NOTE
(REVOLVING LINE OF CREDIT)

$300,000.00 _____, 1991

_____, ____

This Note is secured by, among other things, the Mortgage covering the Restaurants (as defined in the hereinafter defined Loan Agreement), which Mortgage was executed on _____, 1987, and recorded in the Office of Recorder of Deeds at _____, as amended by First Modification recorded at _____.

FOR VALUE RECEIVED, HEN HOUSE INTERSTATE, INC., a Delaware corporation (the "Borrower"), hereby promises to pay to the order of LANDMARK BANK OF ILLINOIS ("Landmark"), at its business office located at 10950 Lincoln Trail, Fairview Heights, Illinois 62208, or at such other place as the holder of this Note may designate in writing the principal sum of THREE HUNDRED THOUSAND DOLLARS ($300,000.00), or so much thereof as shall be advanced hereunder by Landmark to the Borrower as established by the records of Landmark, pursuant to and under a Post-Petition Loan Agreement, dated as of the date hereof (the "Loan Agreement"), together with interest thereon accruing from the date hereof at a rate equal to five percent (5%) per annum above the standard prime rate of interest announced as being charged by Landmark Bank, St. Louis, Missouri from time to time as adjusted simultaneously with any change in such prime rate. Interest

accrued on the principal amount of the loan from time to time advanced shall be payable by the Borrower to Landmark on __ of each week, commencing on _____, 1991 through and including the Termination Date as defined in the Loan Agreement, the maturity date hereof. Interest shall be calculated on the basis of the actual number of days elapsed in a year having 360 days. The principal amount of the loan advanced or readvanced from time to time, shall be repaid in accordance with the provisions of the Loan Agreement. Unless demand for payment is made pursuant to the terms of the Loan Agreement, all outstanding principal amounts unpaid shall be repaid on the maturity date.

All advances hereunder shall be endorsed on the reverse side hereof by Landmark or the holder hereof, and between the undersigned and Landmark or the holder such endorsements and the balances derived from such endorsements shall be presumed to reflect the amounts advanced hereunder and the then outstanding and unpaid balance of the sums advanced hereunder, exclusive of any accrued interest thereon.

FROM AND AFTER THE MATURITY OF THIS NOTE, WHETHER BY DEMAND OR OTHERWISE, TO THE EXTENT PERMITTED BY LAW, INTEREST ON THE UNPAID PRINCIPAL AND INTEREST ON THIS NOTE SHALL ACCRUE AT AN ANNUAL RATE EQUAL TO 3 PERCENTAGE POINTS OVER THE RATE OF INTEREST THAT WOULD OTHERWISE THEN BE PAYABLE ON THIS NOTE.

Payment of this Note is guaranteed by William J. Dooner (the "Guarantor"), pursuant to a Guaranty of even date

herewith (the "Guaranty"). This Note is further secured by Deeds of Trust and Mortgages from the Borrower to Landmark (collectively the "Mortgages"), a Security Agreement — Equipment, a Security Agreement — Accounts Receivable and Inventory, an Assignment of Rents, an Assignment of Contract Rights, a Pledge Agreement and an Assignment of Management Contract, all dated as of May 15, 1987 from the Borrower to Landmark, as amended by amendments of even date herewith.

The principal amount of this Note may be prepaid at any time, in whole or in part, without penalty. Any partial prepayment will be applied first against fees or charges due hereunder or under the Loan Agreement, then against interest and then against the principal of this Note. No partial prepayment will excuse any future payment of principal or interest as long as any amounts remain unpaid.

If a default occurs under the Loan Agreement, the Pledge Agreement, the Guaranty, the Term Note, the Assignment of Rents, the Assignment of Contract Rights or the Mortgages, this Note shall, without further notice, be immediately due and payable and the holder of this Note shall have the benefit of all the remedies set forth in the Loan Agreement, the Pledge Agreement, the Guaranty, the Mortgages, the Security Agreement — Equipment, the Security Agreement — Accounts Receivable and Inventory, the Assignment of Rents, the Assignment of Contract Rights and the Assignment of Management Contract as well as all other remedies at law or in equity.

UNLESS LANDMARK GIVES BORROWER WRITTEN NOTICE OF ITS WILLINGNESS TO EXTEND THE MATURITY DATE OF THIS NOTE THE HOLDER OF THIS NOTE SHALL NOT BE REQUIRED TO RENEW, EXTEND OR REFINANCE THIS NOTE OR ANY AMOUNTS DUE UNDER THIS NOTE.

The holder of this Note will not be required to accept any payment that is tendered more than ten (10) days past due, but if the holder does accept such payment, the undersigned will also pay a late charge of 5% of the amount past due. The undersigned will also pay all expenses of the holder hereof in collecting this Note, including, without limitation, all attorneys' fees whether or not litigation is commenced, and all costs and attorneys' fees relating to any insolvency, liquidation, receivership or bankruptcy proceedings.

Each maker, surety, endorser and guarantor of this Note hereby agrees that: (a) this Note may be modified or renewed one or more times and the time for payment of this Note or any renewal note may be extended without notice to or consent of any person obligated on this Note; (b) the holder of this Note may elect to enforce this Note against less than all of the persons directly or indirectly obligated hereon; (c) the holder hereof is not obligated to foreclose upon or exhaust any collateral given for this Note before proceeding against any person directly or indirectly obligated hereon; and (d) presentment, demand for payments, notice of nonpayment, protest, notice of protest, notice of dishonor, and all other notices in connection with this Note, filing of suit and diligence in collecting this Note, are waived.

This Note is governed by the laws of the State of Illinois. Each maker, surety, endorser and guarantor of this Note accepts the jurisdiction over such person and over this Note of any state and federal courts located in the State of Illinois as the holder hereof may reasonably designate.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed, attested and delivered as of the date and year first above written.

HEN HOUSE INTERSTATE, INC.,
a Delaware corporation

By:_____
Title:

ATTEST:
(SEAL)

By:_____
Title

* * *

EXHIBIT C

List of Restaurants Mortgaged to Lender

1. Champaign County, Illinois
2. Dewitt County, Illinois
3. Ford County, Illinois
4. Jackson County, Missouri
5. Laurel County, Kentucky
6. Madison County, Illinois
7. Marion County, Illinois
8. McLean County, Illinois
9. Morgan County, Indiana
10. Muncie (Delaware County), Indiana
11. St. Clair County, Illinois
12. Washington County, Illinois
13. Will County, Illinois

EXHIBIT D

CONTINUING UNLIMITED GUARANTY

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, and to induce LANDMARK BANK OF ILLINOIS (the "Lender") to make loans and advance credit to HEN HOUSE INTERSTATE, INC., a Delaware corporation ("Borrower") and in consideration of any such loan or advance of credit, the signer or signers hereof ("Guarantors" or a "Guarantor") jointly and severally, unconditionally guarantee full payment when due of all Liabilities (as hereinafter defined) of Borrower to the Lender. This shall be a continuing guaranty.

1. The term "Liabilities" or a "Liability" as used herein shall mean the indebtedness of Borrower to Lender under that certain promissory note in the original principal amount of $300,000 executed by Borrower of even date herewith and any extensions, renewals or refundings thereof (and extensions, renewals or refundings made after notice of termination or revocation hereof). "Liabilities" or a "Liability" shall also include expenses, including reasonable attorney's fees, incurred by the Lender in efforts to collect any Liability or to enforce the undertakings of Guarantors hereunder, whether or not litigation is commenced.

2. Each Guarantor waives notice of acceptance of this Guaranty, notice of extension, renewal, refunding of any Liability and the incurrence of an existing Liability and any Liability which has not yet actually accrued (the latter type of Liability being sometimes hereinafter referred to as an

"Inchoate Liability"). All Liabilities shall conclusively be presumed to have been created or accepted by the Lender in reliance on this Guaranty.

3. This Guaranty shall not supersede any earlier guaranty of Guarantors or any of them in which the Lender has an interest nor shall any later guaranty of Guarantors or any of them in which the Lender has an interest be construed to supersede this Guaranty. The effect of any earlier or later guaranty shall be cumulative with this Guaranty, and this shall be the case whether the interest of the Lender in such earlier or later guaranty derives from arrangements made directly with any Guarantor or indirectly by way of the Lender being a transferee of all or part of obligations of Borrower guaranteed by Guarantors or any of them.

4. The obligations of Guarantors hereunder shall apply to all Liabilities, including Inchoate Liabilities, arising prior to notice in writing from any Guarantor that such Guarantor will not be responsible for any further Liabilities or notice from a Guarantor's personal representative that such Guarantor has died or been adjudicated incompetent, and to any renewals, extensions, or other Liabilities arising out of the same, whether made prior to or after revocation of this Guaranty. Any such notice, to be effective, must be actually received by the Lender. Notwithstanding the giving of such notice, the obligations of the Guarantors shall continue in full force and effect as to all Liabilities then existing including Inchoate Liabilities and to any Liabilities thereafter arising, to the extent that the Lender may be bound or permitted by contract or otherwise to create or permit the creation of additional Liabilities including those which may

or might have been Inchoate Liabilities at the time such notice is given. Termination or revocation of this Guaranty by notice or by operation of law shall affect only the obligations of the Guarantor for or on behalf of whom such notice is given or as to whom such event occurs, the obligations of the other Guarantors to continue unabated.

5. It shall not be a condition to the obligations of Guarantors hereunder that the Lender pursue or preserve remedies against Borrower or any other party primarily or secondarily liable on any Liability or that the Lender enforce its rights against any collateral for any Liability, and Guarantors waive any requirement that the Lender so proceed. Guarantors shall have no right of subrogation to the rights of the Lender hereunder on account of payment by any of them of a Liability and hereby waive the right to participate in any security now or hereafter held by the Lender.

6. All payments received from Guarantors shall be deemed to have been made by Borrower unless the Lender is otherwise advised in writing by Borrower and Guarantors and any other Guarantors who may be obligated to the Lender on account of the Liabilities. Upon payment of the Liabilities in full, the Lender will cancel and assign and transfer all of the Liabilities to Borrower unless the Lender is otherwise instructed in writing by Borrower and all of the Guarantors and any other guarantors who may be obligated to the Lender on account of the Liabilities.

7. The Lender is authorized from time to time, without notice to or consent of the Guarantors (any requirement of

such notice or consent being waived by Guarantors) to renew, extend, refund or amend the terms of any Liability or any agreement pursuant to which any Liability is created or security therefor is held, in any manner to surrender, release, realize upon or deal with collateral for the Liabilities, exercise or refrain from exercising rights against Borrower or any Guarantor and to settle, release or otherwise enter into agreements regarding the Liabilities with any party primarily or secondarily liable on any Liability. The Lender may apply any collateral for the Liabilities in such order as it may elect and without any obligation to account to Guarantors or any of them for the manner or order of application.

8. The obligations of Guarantors hereunder shall not be impaired by failure on the part of the Lender to realize upon, perfect any interest in or protect any of the Liabilities or any security therefor, nor shall such obligations be impaired by any impairment, modification, change, release or limitation of any Liability resulting from the operation of any present or future provision of the Bankruptcy Code, as now existing or hereafter amended, or other similar statute, or applicable state law, or from the decision of any court. No invalidity, irregularity or unenforceability of any Liability shall be a defense to this Guaranty.

9. This Guaranty shall inure to the benefit of and may be enforced by the Lender, its successors and assigns and any party to whom all or any part of a Liability may be sold, transferred, negotiated or assigned. If all or part of a Liability is sold, transferred, negotiated or assigned, the Lender shall have the right to enforce this Guaranty as to the remainder.

10. Actions to enforce this Guaranty may be brought successively against one or more of the Guarantors jointly or severally and against less than all without impairing or affecting the rights of the Lender against the others. No release, with or without consideration, nor any action or inaction by the Lender as regards less than all of the Guarantors shall impair the rights of the Lender against the others. However, Guarantors agree among themselves that no release, compounding or settlement shall impair their rights as among themselves.

11. Guarantors and each of them understand and agree that this Guaranty will, unless expressly otherwise agreed, be secured by all collateral previously, now or hereafter pledged to the Lender by any Guarantor and any security interest previously, now or hereafter granted the Lender by any Guarantor whether such pledge or grant of security interest specifically relates to the Liabilities or not.

12. Guarantors and each of them understand and agree that in the event any payment made by or on behalf of Borrower respecting any Liability or any portion of any such payment shall at any time be repaid by the recipient in compliance with an order (whether or not final) by a court of competent jurisdiction pursuant to any provision of the United States Bankruptcy Code as now existing or hereafter amended or applicable state law, the Liabilities shall not be deemed to have been paid to the extent of the repayment so made, the obligations of Guarantors and each of them shall continue in full force and effect and such recipient, whether or not that be the Lender, will continue to be entitled to the full benefits of this Guaranty.

13. The word "Guarantors" as used herein refers to each of the undersigned, their respective heirs, legal representatives, successors and assigns and shall be read in the singular where the context otherwise requires.

14. This Guaranty contains all of the terms and conditions which have been agreed upon by the Lender and Guarantors in connection with this Guaranty and the indebtedness guaranteed hereby. Guarantors, and each of them, represent and warrant that no other oral or written representations, warranties, promises or agreements of any kind or nature whatsoever have been made by the Lender to Guarantors, or any of them, in connection herewith, either directly or indirectly, and Guarantors agree that the terms and conditions of this document may not be altered, modified or amended in any manner except by a writing duly executed by the Lender.

15. Guarantor covenants not to sell, assign or transfer any of the stock of Borrower now owned by Guarantor without the prior written consent of Lender.

16. This Guaranty shall be construed, interpreted and enforced in all respects in accordance with the laws of the State of Illinois (exclusive of its choice of law rules).

Dated as of this __ day of September, 1991.

_____

_____

_____

Home Address

EXHIBIT E

Legal Name of Borrower and all Subsidiaries	State of Incorporation	States in Which Borrower and Subsidiaries Conduct Business	List of Stock of Each Class	Number of Shares of Stock of Each Class Outstanding	Shares of Each Class Owned as of the Closing Date by Borrower and Each Subsidiary
Hen House Interstate, Inc.	Delaware	Illinois, Indiana, Kansas, Kentucky, Missouri	Common	450	

EXHIBIT F

DESCRIPTION OF
BUSINESS/PROPERTIES/OUTSTANDING
INDEBTEDNESS

Borrower/ Subsidiary	Brief Description of Business	List of Properties (attach schedule if necessary)	List of Outstanding Indebtedness (attach schedule if necessary)
Hen House Interstate, Inc.	Operation of family Restaurants with gift shops in Illinois, Kansas, Kentucky and Missouri. Also operates six service stations in conjunction with restaurant locations.	(SEE ATTACHED SCHEDULE)	

EXHIBIT F — DESCRIPTION
OF RESTAURANT LOCATIONS

I-64 and State Route 177
Okawville, IL 62271
Washington County, IL

2413 North 89th Street
Caseyville, IL 62232
St. Clair County, IL

1232 West State Route 32
Lebanon, IN 46052
Boone County, IN

I-57 and Peotone Road
Peotone, IL 60468
Will County, IL

I-70 and Stilesville Road
Stilesville, IN 46190
Morgan County, IN

I-65 and U.S. 50
Seymour, IN 47274
Jackson County, IN

I-75 and U.S. 25 East
Corbin, KY 40701
Laurel County, KY

6085 Air-Cap Drive
Wichita, KS 67219
Sedgewick County, KS

810 Stadium Drive
Jefferson City, MO 65101
Cole County, MO

I-29 and U.S. 136
Rock Port, MO 64482
Atchison County, MO

#19 Highway 109
Eureka, MO 63025
St. Louis County, MO

I-70 and Buckner-Tarsney Road
Grain Valley, MO 64029
Jackson County, MO

I-74 and State Route 47
Mahomet, IL 61853
Champaign County, IL

I-57 and U.S. 45
Pesotum, IL 61863
Champaign County, IL

I-70 and Martinsville Road
Martinsville, IL 62442
Clark County, IL

U.S. 150 and State Route 54
Farmer City, IL 61842
DeWitt County, IL

547 East Adams
Arcola, IL 61910
Douglas County, IL

I-57 and State Route 9
Paxton, IL 60957
Ford County, IL

I-55 and Exit 41
Staunton, IL 62088
Macoupin County, IL

I-55 and Gardner Road
Gardner, IL 60424
Grundy County, IL

I-57 and State Route 161
Centralia, IL 62801
Marion County, IL

1250 East Chain of Rocks Road
Mitchell, IL 62040
Madison County, IL

Route 66 and 24
Chenoa, IL 61726
McLean County, IL

112 East Washington Street
Carlock, IL 61725
McLean County, IL

6008 South 6th Street
Springfield, IL 62703
Sangamon County, IL

I-55 and Exit 80
Divernon, IL 62530
Sangamon County, IL

EXHIBIT G

List of all lien creditors

See schedules filed in Reorganization Proceedings

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Proceedings Under Chapter 11

Case No. 91-45623-293

Motion E

In Re:

HEN HOUSE INTERSTATE, INC.,

Debtor.

EMERGENCY ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION SECURED CREDIT, GRANTING SENIOR LIENS AND ADMINISTRATIVE PRIORITY EXPENSE, MODIFYING AUTOMATIC STAY, PROVIDING ADEQUATE PROTECTION AND AUTHORIZING AGREEMENTS WITH LANDMARK BANK OF ILLINOIS

This matter is before the Court on Debtor's *Emergency Motion For Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §364, to Utilize Cash Collateral Pursuant to 11 U.S.C. §363, and Granting Adequate Protection to Pre-Petition Secured Party* (the "Debtor's Motion") filed by the above Debtor and on the

Emergency Motion for Relief From Automatic Stay or, in the Alternative for Adequate Protection, and for Order Denying Use of Cash Collateral and Requiring Segregation and Accounting of Cash Collateral (the "Landmark Motion") filed by Landmark Bank of Illinois ("Landmark"), Debtor and Landmark having agreed to the entry of this Order, the relief granted hereby and the terms and conditions herein set forth, and on the basis of representations made and testimony received from the Debtor, and upon the record in these Chapter 11 proceedings, the Court finds and determines that it is in the best interests of Debtor's estate and its creditors and that there is good cause to grant the emergency relief requested in the Debtor's Motion and the Landmark Motion herein provided. The Court finds that the Debtor does not otherwise have funds available to meet payroll and other necessary expenses, that the Debtor is unable to obtain credit other than on the basis provided herein, that the ability of the Debtor to continue its business, remain a viable entity and have an opportunity to reorganize under Chapter 11 of the Bankruptcy Code depends on obtaining post-petition secured financing from Landmark on the terms provided herein, and that absent the relief provided herein, Debtor's estate would suffer immediate and irreparable harm. The Court finds that the notice hereof having been provided is, under the circumstances, adequate and sufficient and complies with the requirements of 11 U.S.C. §§102(1) and 361 through 364 and Bankruptcy Rule 4001, and any notice periods in excess hereof are hereby shortened to conform to the notices given herein. The Court further finds that Debtor and Landmark have acted in good faith (as used in §364(e) of the Bankruptcy Code) with respect to the extension of credit authorized pursuant to this Order and all other aspects

of this Order, and that the relief requested and the terms and conditions set forth herein are in the best interests of Debtor's estate and its creditors.

ACCORDINGLY, IT IS, HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, as this matter arises in the Chapter 11 case of Debtor. No trustee has been appointed and Debtor has remained in possession of its estate.

2. Landmark is the holder of a certain revolving line of credit note, executed and delivered by the Debtor as of June 2, 1987 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $350,000.00 with interest thereon, as more fully set forth therein (the "Revolving Note"). A true and correct copy of the Revolving Note has been filed by Landmark under separate cover as Exhibit 1 to the Landmark Motion and is incorporated herein by reference.

3. Landmark is the holder of a certain term promissory note, executed and delivered by the Debtor as of June 2, 1987 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $4,460,000.00 with interest thereon, as more fully set forth therein (the "Term Note"). A true and correct copy of the Term Note has been filed by Landmark under separate cover as Exhibit 2 to the Landmark Motion and is incorporated herein by reference.

4. Landmark is the holder of a certain promissory note, executed and delivered by the Debtor as of March 31, 1991 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $53,000.00 with interest thereon as more fully set forth therein (the "Promissory Note"). A true and correct copy of the Promissory Note has been filed by Landmark under separate cover as Exhibit 3 to the Landmark Motion and is incorporated herein by reference.

5. The Revolving Note and Term Note were amended pursuant to a First Amendment to Promissory Notes ("First Amendment to Notes") dated December 28, 1990. A true and correct copy of the First Amendment to Notes is filed contemporaneously herewith under separate cover as Exhibit 4 and incorporated herein by reference. The Revolving Note, Term Note, First Amendment to Notes and Promissory Note are hereinafter collectively referred to as the "Notes").

6. In connection with the execution of the Notes, the Debtor and Landmark entered into a loan agreement executed May 15, 1987 (the "Original Loan Agreement"). A true and correct copy of the original Loan Agreement has been filed by Landmark under separate cover as Exhibit 5 to the Landmark Motion and is incorporated herein by reference.

7. The Loan Agreement was amended pursuant to a First Amendment to Loan Agreement ("Loan Agreement Amendment #1") dated December 28, 1990. A true and correct copy of the Loan Agreement Amendment #1 has been filed by Landmark under separate cover as Exhibit 6 to the Landmark Motion and is incorporated herein by reference.

8. The Loan Agreement was again amended pursuant to a Second Amendment to Loan Agreement ("Loan Agreement Amendment #2") dated March 31, 1991. A true and correct copy of the Loan Agreement Amendment #2 is filed contemporaneously herewith under separate cover as Exhibit 7 and incorporated herein by reference. The original Loan Agreement, Loan Agreement Amendment #1 and Loan Agreement Amendment #2 are hereinafter collectively referred to as the "Loan Agreement."

9. The Debtor executed and delivered to Landmark the following documents in order to secure the repayment of all obligations of Debtor to Landmark:

a. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 1524, Page 727 in the records of the Recorder's Office of the County of Champaign, State of Illinois (the "Champaign County Mortgage"), which encumbers certain premises in the County of Champaign, State of Illinois, described more fully therein (the "Champaign County Premises"). A true and correct copy of the Champaign County Mortgage has been filed by Landmark under separate cover as Exhibit 8 to the Landmark Motion and is incorporated herein by reference.

b. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 148, Page 320 in the records of the Recorder's Office of the County of DeWitt, State of Illinois (the "DeWitt County Mortgage"), which encumbers certain premises in the County of DeWitt, State of Illinois, described more fully

therein (the "DeWitt County Premises"). A true and correct copy of the DeWitt County Mortgage has been filed by Landmark under separate cover as Exhibit 9 to the Landmark Motion and is incorporated herein by reference.

c. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 180011 in the records of the Recorder's Office of the County of Ford, State of Illinois (the "Ford County Mortgage"), which encumbers certain premises in the County of Ford, State of Illinois, described more fully therein (the "Ford County Premises"). A true and correct copy of the Ford County Mortgage has been filed by Landmark under separate cover as Exhibit 10 to the Landmark Motion and is incorporated herein by reference.

d. Deed of Trust given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 1775025 at 11683P2261 et. seq. in the records of the Recorder's Office of the County of Jackson, State of Missouri (the "Jackson County Deed"), which encumbers certain premises in the County of Jackson, State of Missouri, described more fully therein (the "Jackson County Premises"). A true and correct copy of the Jackson County Deed has been filed by Landmark under separate cover as Exhibit 11 to the Landmark Motion and is incorporated herein by reference.

e. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 173, Page 518 in

the records of the Recorder's Office of the County of Laurel, State of Kentucky (the "Laurel County Mortgage"), which encumbers certain premises in the County of Laurel, State of Kentucky, described more fully therein (the "Laurel County Premises"). A true and correct copy of the Laurel County Mortgage has been filed by Landmark under separate cover as Exhibit 12 to the Landmark Motion and is incorporated herein by reference.

f. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 3423, Page 1266 in the records of the Recorder's Office of the County of Madison, State of Illinois (the "Madison County Mortgage"), which encumbers certain premises in the County of Madison, State of Illinois, described more fully therein (the "Madison County Premises"). A true and correct copy of the Madison County Mortgage has been filed by Landmark under separate cover as Exhibit 13 to the Landmark Motion and is incorporated herein by reference.

g. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 399, Page 485 in the records of the Recorder's Office of the County of Marion, State of Illinois (the "Marion County Mortgage"), which encumbers certain premises in the County of Marion, State of Illinois, described more fully therein (the "Marion County Premises"). A true and correct copy of the Marion County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 14 and incorporated herein by reference.

h. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 87-10253 in the records of the Recorder's Office of the County of McLean, State of Illinois (the "McLean County Mortgage"), which encumbers certain premises in the County of McLean, State of Illinois, described more fully therein (the "McLean County Premises"). A true and correct copy of the McLean County Mortgage has been filed by Landmark under separate cover as Exhibit 15 to the Landmark Motion and is incorporated herein by reference.

i. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 374, Page 247 in the records of the Recorder's Office of the County of Morgan, State of Indiana (the "Morgan County Mortgage"), which encumbers certain premises in the County of Morgan, State of Indiana, described more fully therein (the "Morgan County Premises"). A true and correct copy of the Morgan County Mortgage has been filed by Landmark under separate cover as Exhibit 16 to the Landmark Motion and is incorporated herein by reference.

j. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 1987, Page 7516 in the records of the Recorder's Office of the County of Delaware, State of Indiana (the "Delaware County Mortgage"), which encumbers certain premises in the County of Delaware, State of Indiana, described more fully therein (the "Delaware County Premises"). A true and correct copy of the Delaware County Mortgage has

been filed by Landmark under separate cover as Exhibit 17 to the Landmark Motion and is incorporated herein by reference.

k. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 2676, Page 1130 in the records of the Recorder's Office of the County of St. Clair, State of Illinois (the "St. Clair County Mortgage"), which encumbers certain premises in the County of St. Clair, State of Illinois, described more fully therein (the "St. Clair County Premises"). A true and correct copy of the St. Clair County Mortgage has been filed by Landmark under separate cover as Exhibit 18 to the Landmark Motion and is incorporated herein by reference.

l. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 167252 in Book 367, Page 345 in the records of the Recorder's Office of the County of Washington, State of Illinois (the "Washington County Mortgage"), which encumbers certain premises in the County of Washington, State of Illinois, described more fully therein (the "Washington County Premises"). A true and correct copy of the Washington County Mortgage has been filed by Landmark under separate cover as Exhibit 19 to the Landmark Motion and is incorporated herein by reference.

m. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number R87-28965 in the records of the Recorder's Office of

the County of Will, State of Illinois (the "Will County Mortgage"), which encumbers certain premises in the County of Will, State of Illinois, described more fully therein (the "Will County Premises"). A true and correct copy of the Will County Mortgage has been filed by Landmark under separate cover as Exhibit 20 to the Landmark Motion and is incorporated herein by reference.

n. Collateral Pledge Agreement by the Debtor to Landmark dated May 15, 1987 (the "Collateral Pledge") wherein Debtor pledged to Landmark a certificate of deposit and other items as more fully described therein. A true and correct copy of the Collateral Pledge has been filed by Landmark under separate cover as Exhibit 21 to the Landmark Motion and is incorporated herein by reference.

o. Security Agreement-Equipment by the Debtor to Landmark dated May 15, 1987 (the "Equipment Security Agreement") wherein the Debtor granted to Landmark a security interest in furniture, fixtures, equipment, and machinery of every kind and nature, as more fully set forth in the Equipment Security Agreement. A true and correct copy of the Equipment Security Agreement has been filed by Landmark under separate cover as Exhibit 22 to the Landmark Motion and is incorporated herein by reference.

p. Security Agreement (Inventory-Accounts Receivable) by the Debtor to Landmark dated May 15, 1987 (the "Inventory Security Agreement") wherein the

Debtor granted to Landmark a security interest in the Debtor's inventory and accounts receivable as more fully set forth in the Inventory Security Agreement. A true and correct copy of the Inventory Security Agreement has been filed by Landmark under separate cover as Exhibit 23 to the Landmark Motion and is incorporated herein by reference.

q. Assignment of Interest in Contracts and Leases by the Debtor to Landmark dated May 15, 1987 (the "Contracts/Leases Assignment") wherein the Debtor assigned to Landmark all of the Debtor's right, title and interest in and to all contracts, permits, licenses, easements and leases, as more fully described therein. A true and correct copy of the Contracts/Leases Assignment has been filed by Landmark under separate cover as Exhibit 24 to the Landmark Motion and is incorporated herein by reference.

r. Assignment of Contract Rights by the Debtor to Landmark dated May 15, 1987 (the "Contract Rights Assignment") wherein the Debtor granted to Landmark a security interest in all of the Debtor's rights under a Management Services Agreement between the Debtor and Omni Outdoor Advertising, Inc. as more fully described therein. A true and correct copy of the Contract Rights Assignment has been filed by Landmark under separate cover as Exhibit 25 to the Landmark Motion and is incorporated herein by reference.

10. The Champaign County Mortgage, DeWitt County Mortgage, Ford County Mortgage, Jackson County Deed,

Laurel County Mortgage, Madison County Mortgage, Marion County Mortgage, McLean County Mortgage, Morgan County Mortgage, Delaware County Mortgage, St. Clair County Mortgage, Washington County Mortgage, Will County Mortgage, Collateral Pledge, Equipment Security Agreement, Inventory Security Agreement, Contracts/Lease Assignment and Contract Rights Assignment are hereinafter collectively referred to as the "Collateral Documents." The Notes, the Loan Agreement and the Collateral Documents are hereinafter sometimes collectively referred to as the "Loan Documents."

11. Perfection of Landmark's security interests granted in the Collateral Documents, was effectuated *inter alia* by the filing of Uniform Commercial Code Financing Statements with the offices and in the indexes as noted thereon (the "Filings"). True and correct copies of the Filings has been filed by Landmark under separate cover as Exhibit 26 to the Landmark Motion and is incorporated herein by reference.

12. Pursuant to the Loan Documents, Debtor promised to pay all costs of collection of Landmark incurred in connection therewith, including, without limitation, reasonable costs, fees, attorneys' fees and expenses.

13. Debtor is in default of its obligations to Landmark under the Loan Documents.

14. As of the date Debtor filed its petition herein (the "Filing Date"), Debtor was indebted to Landmark in the

aggregate amount of $4,139,676.57, plus accruing interest,[1] costs, expenses and fees of collection (the "Indebtedness"). The validity and priority of the Indebtedness and the liens and security interests securing the Indebtedness are not subject to any setoff, recoupment, counterclaim, avoidance or other challenge or attack of any kind or nature. The Indebtedness is hereby allowed as a secured claim.

15. All of Debtor's cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, proceeds, products, rents, or profits derived from Debtor's business or any other property subject to Landmark's security interests, whether existing before or after the Filing Date, constitute "cash collateral" pursuant to 11 U.S.C. §363 and is subject to the duly perfected liens of Landmark (the "Cash Collateral").

16. Substantially all real and all personal property of Debtor, including its fixtures, accounts, Cash Collateral, inventory, machinery, equipment, real estate and personal property of any nature whatsoever (collectively the "Collateral") is encumbered by and subject to the first priority, perfected liens of Landmark pursuant to the duly executed Loan Documents as security for repayment of the Indebtedness.

17. Pursuant to 11 U.S.C. §363, Debtor is prohibited from using, selling or leasing the Collateral for any purpose unless Landmark consents or the Court, after notice and a

1. Interest has been calculated at the pre-default rate. This Order shall be without prejudice to Landmark's right to claim interest at the default rates specified in the Loan Documents.

hearing, authorizes such use, sale, or lease in accordance with the provisions of 11 U.S.C. §363.

18. Pursuant to 11 U.S.C. §363(c)(4), Debtor is required to segregate and account for all Cash Collateral in its possession, custody or control.

19. 11 U.S.C. §363(e) requires that notwithstanding any other provision of said section, upon Landmark's request, the Court, with or without a hearing, shall prohibit or condition Debtor's use, sale, or lease of any Collateral as is necessary to provide adequate protection of Landmark's interests therein.

20. Except upon further Order of this Court or upon default hereunder, Debtor, as debtor-in-possession, may continue to operate its business and to collect the cash, rents, profits and proceeds generated therefrom, limited solely to the ordinary course of business and in accordance with the provisions of this Order and the Bankruptcy Code.

21. All cash, cash equivalents, rents, profits, proceeds and income collected by the Debtor or on the Debtor's behalf shall be deposited and maintained at all times in a debtor-in-possession bank account(s) at Landmark (the "DIP Accounts") in accordance with 11 U.S.C. §345 and shall not be commingled with any other funds derived from any source whatsoever that do not constitute "Cash Collateral" under the terms of this Order.

22. Except as expressly permitted herein, Debtor shall not use any Cash Collateral in its possession, custody or

control at any time, and any cash previously or hereafter received by or on behalf of Debtor immediately shall be delivered to Landmark and used in accordance with the terms of the Post-Petition Loan Agreement (the "Post-Petition Loan Agreement") attached as Exhibit A to the Debtor's Motion and in accordance with the terms of this Order.

23. Debtor is hereby authorized pursuant to 11 U.S.C. §364 to enter into and execute the Post-Petition Loan Agreement, and all documents required thereby or in connection therewith, and borrow funds from Landmark pursuant thereto and pursuant to this Order. The Debtor is hereby immediately authorized to borrow pursuant to the Post-Petition Loan Agreement up to the amount of $50,000, which authorization is without prejudice to the Debtor's request for authorization at the final hearing on this matter to borrow up to the balance of the financing available under the Post-Petition Loan Agreement. The indebtedness incurred under the Post-Petition Loan Agreement shall be secured and collateralized as provided herein. All amounts advanced under the Post-Petition Loan Agreement shall constitute post-petition loans (the "Post-Petition Loans") by Landmark to, and debts of, Debtor bearing interest at the rate provided therein. All obligations described herein, including the Indebtedness and the Post-Petition Loans, are hereby ordered and adjudicated to be binding and enforceable obligations of the Debtor. The Post-Petition Loans shall mature and become immediately due and payable upon the earliest of (i) default hereunder, (ii) default under the Post-Petition Loan Agreement or (iii) the maturity date specified in the Post-Petition Loan Agreement (or any extended maturity date that may be agreed to in writing by Landmark), at which time

the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark shall be immediately due and payable. Landmark's obligation to make advances pursuant to the Post-Petition Loan Agreement shall at all times be entirely discretionary on Landmark's part, and in any event shall terminate upon Debtor's default hereunder or upon maturity of the Post-Petition Loans unless the maturity of the Post-Petition Loans is extended, or the Post-Petition Loans are renewed, as hereinafter provided. Landmark may, in its sole discretion, elect to extend the maturity of the Post-Petition Loans, but Landmark shall have no obligation whatsoever to so extend.

24. Subject to the terms hereof and Debtor's compliance herewith, Debtor is hereby authorized to use the Cash Collateral and the proceeds of the Post-Petition Loans for the amounts set forth in the budget attached hereto and incorporated herein by reference as Attachment 1 (the "Budget") for use solely for the payment of the expenses to the extent set forth in the Budget. Notwithstanding the foregoing, except for the $100,000 retainer of the Debtor's attorneys ($20,000 of which shall be deposited with the Debtor's attorneys upon entry of this Order and the remaining $80,000 of which shall be deposited with the Debtor's attorneys upon entry of a final order approving in all respects the terms of this Order), the expenses designated in the Budget shall be limited to post-Filing Date expenses incurred in the ordinary course of Debtor's business, except as expressly authorized by separate Orders of this Court. Except as specifically authorized herein or by separate Orders of this Court, no transactions with, funds or payments to, or commitments to pay, any insider (except normal, reasonable

salaries), affiliate or related entity of, or controlled (directly or indirectly) by Debtor, shall be made, paid or disbursed by Debtor to any such insider, affiliate or related entity.

25. Debtor shall pay or cause to be paid all ordinary and necessary expenses of operation of its business and the costs required to care for, preserve and maintain the Collateral, which are allowed in the Budget, including, but not limited to, the following:

a. Utility costs and telephone charges;

b. Reasonable salaries to employees of Debtor;

c. Upkeep, maintenance and repairs;

d. Insurance so as to assure continued coverage of the Collateral in accordance with the Loan Documents;

e. Purchase or rental of necessary supplies and equipment;

f. Income, withholding, sales, use, real estate and other taxes, operating permit fees and other charges necessarily incurred in the ordinary course of the Debtor's business.

26. In order to protect Landmark against a decline in the value of its secured position in the Collateral, and to afford such other adequate protection as is required under the Bankruptcy Code:

a. The Debtor shall operate its business pursuant to the terms herein set forth and shall perform all of the obligations hereunder.

b. Landmark is hereby granted, to the extent not heretofore granted, a first, priority and perfected senior lien and security interest in all presently owned and hereafter acquired real and personal property, assets and rights of any kind and nature of Debtor, including all proceeds thereof, wherever located, to secure the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark, including interest, fees and expenses thereon. In accordance with 11 U.S.C. §507(b), to the extent the value of Landmark's security interests in the Collateral declines after entry of this Order notwithstanding the adequate protection herein set forth, or such adequate protection otherwise proves to be inadequate, said liens and security interests shall have priority over all administration expenses of any kind as provided in 11 U.S.C. §364(c)(1), and, pursuant to 11 U.S.C. §364(c), shall be first and prior liens on the aforesaid property, assets and rights of Debtor. Proceeds from the liquidation of any Collateral shall be applied to the Indebtedness and the Post-Petition Loans in such manner and order as Landmark, in its sole discretion, shall elect.

c. Except as specifically modified herein with respect to payment, or under applicable provisions of the Bankruptcy Code, Debtor shall comply with all terms and provisions of the Loan Documents. Landmark's waiver of the breach of any covenant set forth in the

Loan Documents shall not be deemed a waiver of any subsequent defaults or remedies to which Landmark may be entitled.

d. Landmark is hereby granted the right and is authorized to enter upon, occupy and use any or all of the premises of the Debtor as is reasonable upon prior notice to the Debtor, as Landmark may deem necessary or appropriate, in Landmark's sole discretion, in connection with the exercise of any of Landmark's rights and remedies under the Loan Documents and/or the Post-Petition Loan Agreement, including, without limitation, liquidation of the Collateral.

e. Debtor immediately and continuously shall use its best efforts to market for sale as a going concern the outdoor billboard advertising business of the Debtor, and the proceeds from any such sale immediately shall be paid to Landmark at the closing of such sale for application toward reduction of the Indebtedness.

f. Proceeds from all non-ordinary course of business sales of assets of the Debtor immediately shall be paid to Landmark at the closing(s) of such sales for application toward reduction of the Indebtedness.

g. The automatic stay of 11 U.S.C. §362(a) is hereby modified to the extent necessary to permit Landmark to receive all proceeds from asset sales of the Debtor and apply the same toward reduction of the Indebtedness. Furthermore, the automatic stay is hereby vacated in all respects as to Landmark for the enforcement of

Landmark's rights with respect to the creation, perfection and implementation of Landmark's pre-petition and post-petition liens and security interests in the Collateral.

h. At such time as Landmark is entitled to exercise any remedy with respect to one or more items of Collateral, whether as a result of a default by Debtor or otherwise, the Debtor (or a trustee if one shall have been appointed) shall, at Landmark's request (A) immediately arrange, and diligently pursue to conclusion, a sale or sales, pursuant to 11 U.S.C. §363 free and clear of all liens, claims, encumbrances and interests, of such Collateral designated by Landmark, with Landmark to retain its right to credit bid all or any portion of the Debtor's obligations to Landmark, or (B) immediately transfer (by deed in lieu of foreclosure or other similar conveyance) to Landmark such Collateral designated by Landmark for a credit bid in an amount to be approved by the Court as fair and reasonable.

27. Subject to the terms hereof, Debtor shall sell or dispose of its inventory, products and supplies and shall operate its business only in the ordinary course of business in compliance with the provisions of the Bankruptcy Code and upon the terms and conditions usual and customary in such business, and shall deposit the proceeds of such operations only in the DIP Accounts.

28. Landmark's authorized representatives shall be given continuous reasonable access at all times to any and all operating personnel, books, records, information and documents of Debtor relating to the operation of Debtor's business and Debtor's financial dealings.

29. Debtor shall furnish or otherwise cause to be furnished to Landmark all such documents and reports as are required by the Loan Documents and the Post-Petition Loan Agreement at such times and in such a manner as are required by the Loan Documents and the Post-Petition Loan Agreement. In addition, the Debtor shall provide Landmark with copies of all schedules and statements of affairs, operating reports, and other financial information, if any, at any time filed in these proceedings by the Debtor.

30. Debtor is authorized and directed to reimburse Landmark promptly for all present and future costs and expenses incurred by Landmark to effectuate the financing transactions as provided in the Loan Documents, the Post-Petition Loan Agreement and/or this Order, including, but not limited to, audit expenses, field examination expenses, title insurance costs, recording costs and fees of Landmark's counsel, all of which costs and expenses are included in the Post-Petition Loans.

31. Notwithstanding anything herein contained to the contrary, this Order shall be without prejudice to Landmark's rights under 11 U.S.C. §§506 and 507 should the adequate protection provided by Debtor hereunder subsequently be found by this Court to have been inadequate.

32. The Debtor does hereby remise, release, acquit and forever discharge Landmark, and all of its officers, directors, agents, employees, affiliates, subsidiaries, successors and assigns, and anyone claiming through or under them or any of them, of and from all manner of action, causes of action, claims and demands of every kind and nature whatsoever,

whether known or unknown, from the beginning of time to the date of these presents, that the Debtor had or may now have against Landmark as may have arisen, or may arise, in connection with any and all matters, including, but not limited to, all matters that were or could have been set forth in connection with the loan relationship between Hen House Interstate, Inc., and Landmark.

33. No expense of administration of Debtor's Chapter 11 case or any future proceeding which may develop out of such case, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against Landmark or the Collateral, whether pursuant to §506(c) of the Bankruptcy Code or otherwise, without the prior written consent of Landmark, and no such consent shall ever be implied from any other action, inaction or acquiescence by Landmark.

34. In the event Debtor fails to make any payment due under this Order or under the Post-Petition Loan Agreement, Landmark may provide written notice of said non-payment by telecopy, certified mail or hand-delivery to Debtor's counsel. If said payment is not made within two business days after said notice is so provided, the 11 U.S.C. §362(a) automatic stay shall be deemed terminated automatically without further Order of this Court and Landmark shall have all of the rights and remedies otherwise granted to it in this Order and under the Loan Documents and the Post-Petition Loan Agreement and applicable state law, including, without limitation, the rights of set-off, peaceable repossession, foreclosure and contacting Debtor's account debtors to collect receivables. In the event Debtor fails to comply with

the terms hereof, other than any payment terms contained in this Order and in the Post-Petition Loan Agreement, Landmark may so advise counsel for Debtor by telecopy, certified mail or hand-delivery and, if the default is not cured within two business days of said notice, may apply to the Court for a hearing thereon at the earliest practical time and date. In the proceedings on any such application, Debtor shall have the burden of proving that Debtor is in full compliance with the terms of this Order and the Post-Petition Loan Agreement. A ruling by the Court that Debtor has failed to meet its burden of proof on that issue shall result in an immediate termination of the 11 U.S.C. §362(a) automatic stay with respect to Landmark and the Collateral. No party in interest shall have the right to contest the enforcement of this paragraph based on any assertion that Landmark's interests in the Collateral are adequately protected or on any other ground except the non-existence of an alleged default as set forth above, and no party in interest shall have the right to seek injunctive relief under §105 of the Bankruptcy Code inconsistent with the terms of this paragraph. Until all obligations of the Debtor to Landmark shall have been indefeasibly satisfied in full: (i) No party-in-interest other than Landmark shall foreclose or otherwise seek to enforce any lien, junior lien or other rights such other party may have in and to any property of the estate of Debtor upon which Landmark holds or asserts a lien or security interest; and (ii) upon and after the occurrence of any failure by Debtor to comply with any provision of this Order, Landmark, in its sole discretion, in connection with a liquidation of any Collateral may use any real property, equipment, trademarks, trade names, patents or any other assets of Debtor that are owned by or subject to a lien of any third party and that are

used by Debtor in its business, without the payment of fees or rentals by Landmark to such third parties.

35. Landmark shall be entitled to the full protection of 11 U.S.C. §364(e) with respect to the debts, obligations, liens and security interests created or authorized in this Order in the event that this Order or any authorization contained herein is vacated, reversed or modified on appeal or otherwise by any court of competent jurisdiction.

36. There shall not at any time be entered in Debtor's Chapter 11 case or any subsequent Chapter 7 case any further order which authorizes: (i) the use of Cash Collateral by Debtor or the sale, lease or other disposition of property of the estate of the Debtor in which Landmark has an interest; or (ii) under 11 U.S.C. §364, the obtaining of credit or the incurring of indebtedness secured by a lien or security interest that is equal or senior to a lien or security interest held by Landmark, or that is entitled to priority administrative status which is equal or superior to that granted to Landmark herein, unless, in each instance: (a) Landmark shall have given its prior written consent thereto, provided that no such consent shall ever be implied from any other action, inaction or acquiescence by Landmark; and (b) such order of this Court requires that there shall first be indefeasibly paid in full to Landmark all obligations of Debtor to Landmark.

37. The security interests and liens granted to Landmark hereunder or otherwise, the obligations of the Debtor to Landmark and the Collateral shall not be altered, modified, extended, discharged, impaired or affected by any plan of reorganization, except upon the prior written consent of Landmark.

38. The Debtor is hereby prohibited from seeking an injunction pursuant to 11 U.S.C. §105, or otherwise, to limit or delay Landmark from realizing upon the Collateral.

39. In determining to make advances to the Debtor under the Post-Petition Loan Agreement or to collect such indebtedness and obligations, Landmark shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or an "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Internal Revenue Code, as amended, or any other Federal or state statute).

40. Debtor shall serve a copy of this Order on all parties listed on its List of Twenty Largest Creditors by first-class mail, postage prepaid within three days following the entry hereof. In accordance with Bankruptcy Rules 4001(c) and (d), any creditor or party in interest who objects to the continued effect of this Order shall have until 4:30 p.m. on September __, 1991, within which to file such objection in writing with this Court and simultaneously serve such objection on the following:

David A. Warfield, Esq.
Husch & Eppenberger
100 North Broadway
St. Louis, Missouri 63102
Telephone: (314) 421-4800
Telecopy: (314) 421-0239

Carl J. Spector, Esq.
Bryan, Cave, McPheeters
& McRoberts
500 N. Broadway, Ste. 2000
St. Louis, Missouri 63102
Telephone: (314) 231-8600
Telecopy: (314) 231-5817

41. In the event such an objection is timely filed, this Order shall be treated as a preliminary Order pursuant to Bankruptcy Rules 4001(c) and (d) and may be affirmed, modified or vacated following a final hearing on the Debtor's Motion and the Landmark Motion, which final hearing shall be held on September 25, 1991, at 9:30 a.m. pursuant to Bankruptcy Rule 4001, provided, however, that the post-petition loans, advances, and credits, and the liens securing the same, shall not be affected by any such objection. If by 4:30 p.m. on September 23, 1991, no such objection has been filed, this Order shall be automatically deemed to have been entered pursuant to a final hearing on the Debtor's Motion and the Landmark Motion, in accordance with Bankruptcy Rule 4001, at which time this Order shall be deemed a final Order. If, however, any such objection is filed, this Order nevertheless shall remain in full force and effect pending the entry of an order pursuant to a final hearing. If (i) a final Order approving in all respects the terms of this Order is not entered within 20 days from the date hereof, or (ii) an order is entered at any time that terminates or modifies in any way the provisions of this Order, then Landmark shall have no further obligations to the Debtor whatsoever and the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark immediately shall be due and payable.

42. The rights and liens granted and adjudications made herein as to Landmark, and the obligations and duties of the Debtor herein, shall be binding and valid against the Debtor, all creditors and parties-in-interest in this proceeding and any successor(s) of Debtor, including any Chapter 7 trustee appointed in the present or any subsequent proceedings under

the Bankruptcy Code and shall survive the termination, modification or expiration of this Order, or any termination of the present proceedings, whether by confirmation of a plan, dismissal, conversion or otherwise. Landmark shall not be required to take any further actions or make any filings to perfect said rights and liens. If, however, Landmark shall, in its sole discretion, elect for any reason to file any financing statements, mortgages, deeds of trust or other documents with respect to such security interests and liens, the Debtor promptly shall execute same upon Landmark's request and all such financing statements, mortgages, deeds of trust and other documents shall be deemed to have been filed or recorded at the time and on the date of commencement of this Chapter 11 case. Landmark may, in its sole discretion, file a certified copy of this Order in any filing or recording office in any county or other jurisdiction in which the Debtor has real or personal property and, in such event, the subject filing or recording officer is authorized and directed to file or record such certified copy of this Order.

43. This Order may be extended from time to time without further hearing, upon written agreement of Debtor and Landmark and upon notice to the Court and to those parties as the Court may designate from time to time.

DATED: September __, 1991

_____

UNITED STATES BANKRUPTCY JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

HEN HOUSE INTERSTATE, INC.
Debtor and
Debtor-in-Possession

By /s/ David A. Warfield
David A. Warfield
Husch & Eppenberger
100 North Broadway
St. Louis, Missouri 63102
(314) 421-4800

Its Attorneys

LANDMARK BANK OF ILLINOIS

By /s/ Carl J. Spector
Carl J. Spector
Karen W. Fries
Bryan, Cave, McPheeters & McRoberts
500 N. Broadway,
Suite 2000
St. Louis, Missouri 63102
(314) 231-8600

Its Attorneys

[EXHIBIT I IS REPRODUCED AT 175a-177a.]

[EXHIBIT J IS REPRODUCED AT 173a-174a.]

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Proceedings Under
Chapter 11
Case No. 91-45623-293

In Re:

HEN HOUSE INTERSTATE, INC.

Debtor.

NOTICE OF FINAL HEARING ON DEBTOR'S EMERGENCY ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION SECURED CREDIT, GRANTING SENIOR LIENS AND ADMINISTRATIVE PRIORITY EXPENSE, MODIFYING AUTOMATIC STAY, PROVIDING ADEQUATE PROTECTION AND AUTHORIZING AGREEMENTS WITH LANDMARK BANK OF ILLINOIS AND ON EMERGENCY MOTION FOR RELIEF FROM AUTOMATIC STAY, OR IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION, AND FOR ORDER DENYING USE OF CASH COLLATERAL AND REQUIRING SEGREGATION AND ACCOUNTING OF CASH COLLATERAL FILED BY LANDMARK BANK OF ILLINOIS

Emergency Motion to Obtain Post-Petition Financing

TO: INDIVIDUALS AND ENTITIES PER NOTICE LIST ATTACHED HERETO

PLEASE TAKE NOTICE that on September 6, 1991, the following motions were filed with the Court; Debtor's *Emergency Motion for Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364, to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and Granting Adequate Protection to Pre-Petition Secured Party* (the "Debtor's Motion") and *Emergency Motion for Relief From Automatic Stay or, in the Alternative, for Adequate Protection, and for Order Denying Use of Cash Collateral and Requiring Segregation and Accounting of Cash Collateral* filed by Landmark Bank of Illinois ("Landmark's Motion"). Pursuant to those motions, the Court entered an Emergency Order on September 6, 1991, a copy of which is being served on you simultaneously herewith, together with a copy of the Debtor's Motion. In accordance with bankruptcy Rule 4001, any creditor or party in interest who objects to the Order becoming final shall have until 4:30 p.m. on September 23, 1991, within which to file such objection in writing with this Court and simultaneously serve such objection on the following:

David A. Warfield, Esq.
Husch & Eppenberger
100 North Broadway, #1300
St. Louis, MO 63102
Phone: (314) 421-4800
Fax: (314) 421-0239

Carl J. Spector, Esq.
Bryan, Cave, McPheeters & McRoberts
500 N. Broadway, #2000
St. Louis, MO 63102
Phone: (314) 231-8600
Fax: (314) 231-5817

Emergency Motion to Obtain Post-Petition Financing

In the event such an objection is timely filed, the Order shall be treated as a preliminary Order pursuant to Bankruptcy Rule 4001 and may be affirmed, modified or vacated following a final hearing on the Debtor's Motion and Landmark's Motion, which final hearing shall be held in the courtroom of the Honorable David P. McDonald, Bankruptcy Judge, at the United States Courthouse Building, 1114 Market Street, 7th Floor, St. Louis, Missouri, on September 25, 1991, at 9:30 a.m. pursuant to Bankruptcy Rule 4001, provided, however, that the post-petition loans, advances and credits, and the liens securing the same, authorized by the Emergency Order shall not be affected by any such objection. If by 4:30 p.m. on September 23, 1991, no such objection has been filed, this Order shall be automatically deemed to have been entered pursuant to a final hearing on the Debtor's Motion and Landmark's Motion, in accordance with Bankruptcy Rule 4001, at which time this Order shall be deemed a final Order. If, however, any such objection is filed, the Emergency Order nevertheless shall remain in full force and effect pending the entry of an order pursuant to a final hearing. If an order is entered that terminates or modifies in any way the provisions of the Emergency Order, then Landmark shall have no further obligations to the Debtor whatsoever and all obligations of the Debtor to Landmark immediately shall be due and payable.

Emergency Motion to Obtain Post-Petition Financing

Dated: September 7, 1991.

HEN HOUSE INTERSTATE, INC.
Debtor and Debtor-in-Possession

s/ David A. Warfield
David A. Warfield
Susan M. Spraul
100 North Broadway, Suite 1300
St. Louis, Missouri 63102
(314) 421-4800

EMERGENCY ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION AUTHORIZING DEBTOR TO OBTAIN POST-PETITION SECURED CREDIT, GRANTING SENIOR LIENS AND ADMINISTRATIVE PRIORITY EXPENSE, MODIFYING AUTOMATIC STAY, PROVIDING ADEQUATE PROTECTION AND AUTHORIZING AGREEMENTS WITH LANDMARK BANK OF ILLINOIS DATED SEPTEMBER 6, 1991

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Proceedings Under Chapter 11

Case No. 91-45623-293

Motion E

In Re:

HEN HOUSE INTERSTATE, INC.,

Debtor.

EMERGENCY ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION SECURED CREDIT, GRANTING SENIOR LIENS AND ADMINISTRATIVE PRIORITY EXPENSE, MODIFYING AUTOMATIC STAY, PROVIDING ADEQUATE PROTECTION AND AUTHORIZING AGREEMENTS WITH LANDMARK BANK OF ILLINOIS

This matter is before the Court on Debtor's *Emergency Motion For Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §364, to Utilize Cash Collateral Pursuant to 11 U.S.C. §363, and Granting Adequate Protection to Pre-Petition Secured Party* (the "Debtor's Motion") filed by the above Debtor and on the *Emergency Motion for Relief From Automatic Stay or, in the Alternative for Adequate Protection, and for Order Denying Use of Cash Collateral and Requiring Segregation and Accounting of Cash Collateral* (the "Landmark Motion") filed by Landmark Bank of Illinois ("Landmark"), Debtor and Landmark having agreed to the entry of this Order, the relief granted hereby and the terms and conditions herein set forth, and on the basis of representations made and testimony received from the Debtor, and upon the record in these Chapter 11 proceedings, the Court finds and determines that it is in the best interests of Debtor's estate and its creditors and that there is good cause to grant the emergency relief requested in the Debtor's Motion and the Landmark Motion herein provided. The Court finds that the Debtor does not otherwise have funds available to meet payroll and other necessary expenses, that the Debtor is unable to obtain credit other than on the basis provided herein, that the ability of the Debtor to continue its business, remain a viable entity and have an opportunity to reorganize under Chapter 11 of the Bankruptcy Code depends on obtaining post-petition secured financing from Landmark on the terms provided herein, and that absent the relief provided herein, Debtor's estate would suffer immediate and irreparable harm. The Court finds that the notice hereof having been provided is, under the circumstances, adequate and sufficient and complies with the requirements of 11 U.S.C. §§102(1) and

361 through 364 and Bankruptcy Rule 4001, and any notice periods in excess hereof are hereby shortened to conform to the notices given herein. The Court further finds that Debtor and Landmark have acted in good faith (as used in §364(e) of the Bankruptcy Code) with respect to the extension of credit authorized pursuant to this Order and all other aspects of this Order, and that the relief requested and the terms and conditions set forth herein are in the best interests of Debtor's estate and its creditors.

ACCORDINGLY, IT IS, HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, as this matter arises in the Chapter 11 case of Debtor. No trustee has been appointed and Debtor has remained in possession of its estate.

2. Landmark is the holder of a certain revolving line of credit note, executed and delivered by the Debtor as of June 2, 1987 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $350,000.00 with interest thereon, as more fully set forth therein (the "Revolving Note"). A true and correct copy of the Revolving Note has been filed by Landmark under separate cover as Exhibit 1 to the Landmark Motion and is incorporated herein by reference.

3. Landmark is the holder of a certain term promissory note, executed and delivered by the Debtor as of June 2, 1987 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the

principal sum of $4,460,000.00 with interest thereon, as more fully set forth therein (the "Term Note"). A true and correct copy of the Term Note has been filed by Landmark under separate cover as Exhibit 2 to the Landmark Motion and is incorporated herein by reference.

4. Landmark is the holder of a certain promissory note, executed and delivered by the Debtor as of March 31, 1991 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $53,000.00 with interest thereon as more fully set forth therein (the "Promissory Note"). A true and correct copy of the Promissory Note has been filed by Landmark under separate cover as Exhibit 3 to the Landmark Motion and is incorporated herein by reference.

5. The Revolving Note and Term Note were amended pursuant to a First Amendment to Promissory Notes ("First Amendment to Notes") dated December 28, 1990. A true and correct copy of the First Amendment to Notes is filed contemporaneously herewith under separate cover as Exhibit 4 and incorporated herein by reference. The Revolving Note, Term Note, First Amendment to Notes and Promissory Note are hereinafter collectively referred to as the "Notes").

6. In connection with the execution of the Notes, the Debtor and Landmark entered into a loan agreement executed May 15, 1987 (the "Original Loan Agreement"). A true and correct copy of the original Loan Agreement has been filed by Landmark under separate cover as Exhibit 5 to the Landmark Motion and is incorporated herein by reference.

7. The Loan Agreement was amended pursuant to a First Amendment to Loan Agreement ("Loan Agreement Amendment #1") dated December 28, 1990. A true and correct copy of the Loan Agreement Amendment #1 has been filed by Landmark under separate cover as Exhibit 6 to the Landmark Motion and is incorporated herein by reference.

8. The Loan Agreement was again amended pursuant to a Second Amendment to Loan Agreement ("Loan Agreement Amendment #2") dated March 31, 1991. A true and correct copy of the Loan Agreement Amendment #2 is filed contemporaneously herewith under separate cover as Exhibit 7 and incorporated herein by reference. The original Loan Agreement, Loan Agreement Amendment #1 and Loan Agreement Amendment #2 are hereinafter collectively referred to as the "Loan Agreement."

9. The Debtor executed and delivered to Landmark the following documents in order to secure the repayment of all obligations of Debtor to Landmark:

a. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 1524, Page 727 in the records of the Recorder's Office of the County of Champaign, State of Illinois (the "Champaign County Mortgage"), which encumbers certain premises in the County of Champaign, State of Illinois, described more fully therein (the "Champaign County Premises"). A true and correct copy of the Champaign County Mortgage has been filed by Landmark under separate cover as Exhibit 8 to the Landmark Motion and is incorporated herein by reference.

b. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 148, Page 320 in the records of the Recorder's Office of the County of DeWitt, State of Illinois (the "DeWitt County Mortgage"), which encumbers certain premises in the County of DeWitt, State of Illinois, described more fully therein (the "DeWitt County Premises"). A true and correct copy of the DeWitt County Mortgage has been filed by Landmark under separate cover as Exhibit 9 to the Landmark Motion and is incorporated herein by reference.

c. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 180011 in the records of the Recorder's Office of the County of Ford, State of Illinois (the "Ford County Mortgage"), which encumbers certain premises in the County of Ford, State of Illinois, described more fully therein (the "Ford County Premises"). A true and correct copy of the Ford County Mortgage has been filed by Landmark under separate cover as Exhibit 10 to the Landmark Motion and is incorporated herein by reference.

d. Deed of Trust given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number I775025 at I1683P2261 et. seq. in the records of the Recorder's Office of the County of Jackson, State of Missouri (the "Jackson County Deed"), which encumbers certain premises in the County of Jackson, State of Missouri, described more fully therein (the "Jackson County Premises"). A true and correct copy of

the Jackson County Deed has been filed by Landmark under separate cover as Exhibit 11 to the Landmark Motion and is incorporated herein by reference.

e. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 173, Page 518 in the records of the Recorder's Office of the County of Laurel, State of Kentucky (the "Laurel County Mortgage"), which encumbers certain premises in the County of Laurel, State of Kentucky, described more fully therein (the "Laurel County Premises"). A true and correct copy of the Laurel County Mortgage has been filed by Landmark under separate cover as Exhibit 12 to the Landmark Motion and is incorporated herein by reference.

f. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 3423, Page 1266 in the records of the Recorder's Office of the County of Madison, State of Illinois (the "Madison County Mortgage"), which encumbers certain premises in the County of Madison, State of Illinois, described more fully therein (the "Madison County Premises"). A true and correct copy of the Madison County Mortgage has been filed by Landmark under separate cover as Exhibit 13 to the Landmark Motion and is incorporated herein by reference.

g. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 399, Page 485 in the records of the Recorder's Office of the County of Marion, State of Illinois (the "Marion County

Mortgage"), which encumbers certain premises in the County of Marion, State of Illinois, described more fully therein (the "Marion County Premises"). A true and correct copy of the Marion County Mortgage is filed contemporaneously herewith under separate cover as Exhibit 14 and incorporated herein by reference.

h. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 87-10253 in the records of the Recorder's Office of the County of McLean, State of Illinois (the "McLean County Mortgage"), which encumbers certain premises in the County of McLean, State of Illinois, described more fully therein (the "McLean County Premises"). A true and correct copy of the McLean County Mortgage has been filed by Landmark under separate cover as Exhibit 15 to the Landmark Motion and is incorporated herein by reference.

i. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 374, Page 247 in the records of the Recorder's Office of the County of Morgan, State of Indiana (the "Morgan County Mortgage"), which encumbers certain premises in the County of Morgan, State of Indiana, described more fully therein (the "Morgan County Premises"). A true and correct copy of the Morgan County Mortgage has been filed by Landmark under separate cover as Exhibit 16 to the Landmark Motion and is incorporated herein by reference.

j. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 1987, Page 7516 in the records of the Recorder's Office of the County of Delaware, State of Indiana (the "Delaware County Mortgage"), which encumbers certain premises in the County of Delaware, State of Indiana, described more fully therein (the "Delaware County Premises"). A true and correct copy of the Delaware County Mortgage has been filed by Landmark under separate cover as Exhibit 17 to the Landmark Motion and is incorporated herein by reference.

k. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 2676, Page 1130 in the records of the Recorder's Office of the County of St. Clair, State of Illinois (the "St. Clair County Mortgage"), which encumbers certain premises in the County of St. Clair, State of Illinois, described more fully therein (the "St. Clair County Premises"). A true and correct copy of the St. Clair County Mortgage has been filed by Landmark under separate cover as Exhibit 18 to the Landmark Motion and is incorporated herein by reference.

l. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 167252 in Book 367, Page 345 in the records of the Recorder's Office of the County of Washington, State of Illinois (the "Washington County Mortgage"), which encumbers certain premises in the County of Washington, State of Illinois, described more fully therein (the "Washington County Premises"). A true and

correct copy of the Washington County Mortgage has been filed by Landmark under separate cover as Exhibit 19 to the Landmark Motion and is incorporated herein by reference.

m. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number R87-28965 in the records of the Recorder's Office of the County of Will, State of Illinois (the "Will County Mortgage"), which encumbers certain premises in the County of Will, State of Illinois, described more fully therein (the "Will County Premises"). A true and correct copy of the Will County Mortgage has been filed by Landmark under separate cover as Exhibit 20 to the Landmark Motion and is incorporated herein by reference.

n. Collateral Pledge Agreement by the Debtor to Landmark dated May 15, 1987 (the "Collateral Pledge") wherein Debtor pledged to Landmark a certificate of deposit and other items as more fully described therein. A true and correct copy of the Collateral Pledge has been filed by Landmark under separate cover as Exhibit 21 to the Landmark Motion and is incorporated herein by reference.

o. Security Agreement-Equipment by the Debtor to Landmark dated May 15, 1987 (the "Equipment Security Agreement") wherein the Debtor granted to Landmark a security interest in furniture, fixtures, equipment, and machinery of every kind and nature, as more fully set forth in the Equipment Security Agreement. A true and

correct copy of the Equipment Security Agreement has been filed by Landmark under separate cover as Exhibit 22 to the Landmark Motion and is incorporated herein by reference.

p. Security Agreement (Inventory-Accounts Receivable) by the Debtor to Landmark dated May 15, 1987 (the "Inventory Security Agreement") wherein the Debtor granted to Landmark a security interest in the Debtor's inventory and accounts receivable as more fully set forth in the Inventory Security Agreement. A true and correct copy of the Inventory Security Agreement has been filed by Landmark under separate cover as Exhibit 23 to the Landmark Motion and is incorporated herein by reference.

q. Assignment of Interest in Contracts and Leases by the Debtor to Landmark dated May 15, 1987 (the "Contracts/Leases Assignment") wherein the Debtor assigned to Landmark all of the Debtor's right, title and interest in and to all contracts, permits, licenses, easements and leases, as more fully described therein. A true and correct copy of the Contracts/Leases Assignment has been filed by Landmark under separate cover as Exhibit 24 to the Landmark Motion and is incorporated herein by reference.

r. Assignment of Contract Rights by the Debtor to Landmark dated May 15, 1987 (the "Contract Rights Assignment") wherein the Debtor granted to Landmark a security interest in all of the Debtor's rights under a Management Services Agreement between the Debtor

and Omni Outdoor Advertising, Inc. as more fully described therein. A true and correct copy of the Contract Rights Assignment has been filed by Landmark under separate cover as Exhibit 25 to the Landmark Motion and is incorporated herein by reference.

10. The Champaign County Mortgage, DeWitt County Mortgage, Ford County Mortgage, Jackson County Deed, Laurel County Mortgage, Madison County Mortgage, Marion County Mortgage, McLean County Mortgage, Morgan County Mortgage, Delaware County Mortgage, St. Clair County Mortgage, Washington County Mortgage, Will County Mortgage, Collateral Pledge, Equipment Security Agreement, Inventory Security Agreement, Contracts/Lease Assignment and Contract Rights Assignment are hereinafter collectively referred to as the "Collateral Documents." The Notes, the Loan Agreement and the Collateral Documents are hereinafter sometimes collectively referred to as the "Loan Documents."

11. Perfection of Landmark's security interests granted in the Collateral Documents, was effectuated *inter alia* by the filing of Uniform Commercial Code Financing Statements with the offices and in the indexes as noted thereon (the "Filings"). True and correct copies of the Filings has been filed by Landmark under separate cover as Exhibit 26 to the Landmark Motion and is incorporated herein by reference.

12. Pursuant to the Loan Documents, Debtor promised to pay all costs of collection of Landmark incurred in connection therewith, including, without limitation, reasonable costs, fees, attorneys' fees and expenses.

13. Debtor is in default of its obligations to Landmark under the Loan Documents.

14. As of the date Debtor filed its petition herein (the "Filing Date"), Debtor was indebted to Landmark in the aggregate amount of $4,139,676.57, plus accruing interest,[1] costs, expenses and fees of collection (the "Indebtedness"). The validity and priority of the Indebtedness and the liens and security interests securing the Indebtedness are not subject to any setoff, recoupment, counterclaim, avoidance or other challenge or attack of any kind or nature. The Indebtedness is hereby allowed as a secured claim.

15. All of Debtor's cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, proceeds, products, rents, or profits derived from Debtor's business or any other property subject to Landmark's security interests, whether existing before or after the Filing Date, constitute "cash collateral" pursuant to 11 U.S.C. §363 and is subject to the duly perfected liens of Landmark (the "Cash Collateral").

16. Substantially all real and all personal property of Debtor, including its fixtures, accounts, Cash Collateral, inventory, machinery, equipment, real estate and personal property of any nature whatsoever (collectively the "Collateral") is encumbered by and subject to the first priority, perfected liens of Landmark pursuant to the duly executed Loan Documents as security for repayment of the Indebtedness.

---

1. Interest has been calculated at the pre-default rate. This Order shall be without prejudice to Landmark's right to claim interest at the default rates specified in the Loan Documents.

17. Pursuant to 11 U.S.C. §363, Debtor is prohibited from using, selling or leasing the Collateral for any purpose unless Landmark consents or the Court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of 11 U.S.C. §363.

18. Pursuant to 11 U.S.C. §363(c)(4), Debtor is required to segregate and account for all Cash Collateral in its possession, custody or control.

19. 11 U.S.C. §363(e) requires that notwithstanding any other provision of said section, upon Landmark's request, the Court, with or without a hearing, shall prohibit or condition Debtor's use, sale, or lease of any Collateral as is necessary to provide adequate protection of Landmark's interests therein.

20. Except upon further Order of this Court or upon default hereunder, Debtor, as debtor-in-possession, may continue to operate its business and to collect the cash, rents, profits and proceeds generated therefrom, limited solely to the ordinary course of business and in accordance with the provisions of this Order and the Bankruptcy Code.

21. All cash, cash equivalents, rents, profits, proceeds and income collected by the Debtor or on the Debtor's behalf shall be deposited and maintained at all times in a debtor-in-possession bank account(s) at Landmark (the "DIP Accounts") in accordance with 11 U.S.C. §345 and shall not be commingled with any other funds derived from any source whatsoever that do not constitute "Cash Collateral" under the terms of this Order.

22. Except as expressly permitted herein, Debtor shall not use any Cash Collateral in its possession, custody or control at any time, and any cash previously or hereafter received by or on behalf of Debtor immediately shall be delivered to Landmark and used in accordance with the terms of the Post-Petition Loan Agreement (the "Post-Petition Loan Agreement") attached as Exhibit A to the Debtor's Motion and in accordance with the terms of this Order.

23. Debtor is hereby authorized pursuant to 11 U.S.C. §364 to enter into and execute the Post-Petition Loan Agreement, and all documents required thereby or in connection therewith, and borrow funds from Landmark pursuant thereto and pursuant to this Order. The Debtor is hereby immediately authorized to borrow pursuant to the Post-Petition Loan Agreement up to the amount of $50,000, which authorization is without prejudice to the Debtor's request for authorization at the final hearing on this matter to borrow up to the balance of the financing available under the Post-Petition Loan Agreement. The indebtedness incurred under the Post-Petition Loan Agreement shall be secured and collateralized as provided herein. All amounts advanced under the Post-Petition Loan Agreement shall constitute post-petition loans (the "Post-Petition Loans") by Landmark to, and debts of, Debtor bearing interest at the rate provided therein. All obligations described herein, including the Indebtedness and the Post-Petition Loans, are hereby ordered and adjudicated to be binding and enforceable obligations of the Debtor. The Post-Petition Loans shall mature and become immediately due and payable upon the earliest of (i) default hereunder, (ii) default under the Post-Petition Loan Agreement or (iii) the maturity date specified in the Post-

Petition Loan Agreement (or any extended maturity date that may be agreed to in writing by Landmark), at which time the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark shall be immediately due and payable. Landmark's obligation to make advances pursuant to the Post-Petition Loan Agreement shall at all times be entirely discretionary on Landmark's part, and in any event shall terminate upon Debtor's default hereunder or upon maturity of the Post-Petition Loans unless the maturity of the Post-Petition Loans is extended, or the Post-Petition Loans are renewed, as hereinafter provided. Landmark may, in its sole discretion, elect to extend the maturity of the Post-Petition Loans, but Landmark shall have no obligation whatsoever to so extend.

24. Subject to the terms hereof and Debtor's compliance herewith, Debtor is hereby authorized to use the Cash Collateral and the proceeds of the Post-Petition Loans for the amounts set forth in the budget attached hereto and incorporated herein by reference as Attachment 1 (the "Budget") for use solely for the payment of the expenses to the extent set forth in the Budget. Notwithstanding the foregoing, except for the $100,000 retainer of the Debtor's attorneys ($20,000 of which shall be deposited with the Debtor's attorneys upon entry of this Order and the remaining $80,000 of which shall be deposited with the Debtor's attorneys upon entry of a final order approving in all respects the terms of this Order), the expenses designated in the Budget shall be limited to post-Filing Date expenses incurred in the ordinary course of Debtor's business, except as expressly authorized by separate Orders of this Court. Except as specifically authorized herein or by separate Orders of

this Court, no transactions with, funds or payments to, or commitments to pay, any insider (except normal, reasonable salaries), affiliate or related entity of, or controlled (directly or indirectly) by Debtor, shall be made, paid or disbursed by Debtor to any such insider, affiliate or related entity.

25. Debtor shall pay or cause to be paid all ordinary and necessary expenses of operation of its business and the costs required to care for, preserve and maintain the Collateral, which are allowed in the Budget, including, but not limited to, the following:

a. Utility costs and telephone charges;

b. Reasonable salaries to employees of Debtor;

c. Upkeep, maintenance and repairs;

d. Insurance so as to assure continued coverage of the Collateral in accordance with the Loan Documents;

e. Purchase or rental of necessary supplies and equipment;

f. Income, withholding, sales, use, real estate and other taxes, operating permit fees and other charges necessarily incurred in the ordinary course of the Debtor's business.

26. In order to protect Landmark against a decline in the value of its secured position in the Collateral, and to afford such other adequate protection as is required under the Bankruptcy Code:

a. The Debtor shall operate its business pursuant to the terms herein set forth and shall perform all of the obligations hereunder.

b. Landmark is hereby granted, to the extent not heretofore granted, a first, priority and perfected senior lien and security interest in all presently owned and hereafter acquired real and personal property, assets and rights of any kind and nature of Debtor, including all proceeds thereof, wherever located, to secure the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark, including interest, fees and expenses thereon. In accordance with 11 U.S.C. §507(b), to the extent the value of Landmark's security interests in the Collateral declines after entry of this Order notwithstanding the adequate protection herein set forth, or such adequate protection otherwise proves to be inadequate, said liens and security interests shall have priority over all administration expenses of any kind as provided in 11 U.S.C. §364(c)(1), and, pursuant to 11 U.S.C. §364(c), shall be first and prior liens on the aforesaid property, assets and rights of Debtor. Proceeds from the liquidation of any Collateral shall be applied to the Indebtedness and the Post-Petition Loans in such manner and order as Landmark, in its sole discretion, shall elect.

c. Except as specifically modified herein with respect to payment, or under applicable provisions of the Bankruptcy Code, Debtor shall comply with all terms and provisions of the Loan Documents. Landmark's waiver of the breach of any covenant set forth in the

Loan Documents shall not be deemed a waiver of any subsequent defaults or remedies to which Landmark may be entitled.

d. Landmark is hereby granted the right and is authorized to enter upon, occupy and use any or all of the premises of the Debtor as is reasonable upon prior notice to the Debtor, as Landmark may deem necessary or appropriate, in Landmark's sole discretion, in connection with the exercise of any of Landmark's rights and remedies under the Loan Documents and/or the Post-Petition Loan Agreement, including, without limitation, liquidation of the Collateral.

e. Debtor immediately and continuously shall use its best efforts to market for sale as a going concern the outdoor billboard advertising business of the Debtor, and the proceeds from any such sale immediately shall be paid to Landmark at the closing of such sale for application toward reduction of the Indebtedness.

f. Proceeds from all non-ordinary course of business sales of assets of the Debtor immediately shall be paid to Landmark at the closing(s) of such sales for application toward reduction of the Indebtedness.

g. The automatic stay of 11 U.S.C. §362(a) is hereby modified to the extent necessary to permit Landmark to receive all proceeds from asset sales of the Debtor and apply the same toward reduction of the Indebtedness. Furthermore, the automatic stay is hereby vacated in all respects as to Landmark for the enforcement of

Landmark's rights with respect to the creation, perfection and implementation of Landmark's pre-petition and post-petition liens and security interests in the Collateral.

h. At such time as Landmark is entitled to exercise any remedy with respect to one or more items of Collateral, whether as a result of a default by Debtor or otherwise, the Debtor (or a trustee if one shall have been appointed) shall, at Landmark's request (A) immediately arrange, and diligently pursue to conclusion, a sale or sales, pursuant to 11 U.S.C. §363 free and clear of all liens, claims, encumbrances and interests, of such Collateral designated by Landmark, with Landmark to retain its right to credit bid all or any portion of the Debtor's obligations to Landmark, or (B) immediately transfer (by deed in lieu of foreclosure or other similar conveyance) to Landmark such Collateral designated by Landmark for a credit bid in an amount to be approved by the Court as fair and reasonable.

27. Subject to the terms hereof, Debtor shall sell or dispose of its inventory, products and supplies and shall operate its business only in the ordinary course of business in compliance with the provisions of the Bankruptcy Code and upon the terms and conditions usual and customary in such business, and shall deposit the proceeds of such operations only in the DIP Accounts.

28. Landmark's authorized representatives shall be given continuous reasonable access at all times to any and all operating personnel, books, records, information and documents of Debtor relating to the operation of Debtor's business and Debtor's financial dealings.

29. Debtor shall furnish or otherwise cause to be furnished to Landmark all such documents and reports as are required by the Loan Documents and the Post-Petition Loan Agreement at such times and in such a manner as are required by the Loan Documents and the Post-Petition Loan Agreement. In addition, the Debtor shall provide Landmark with copies of all schedules and statements of affairs, operating reports, and other financial information, if any, at any time filed in these proceedings by the Debtor.

30. Debtor is authorized and directed to reimburse Landmark promptly for all present and future costs and expenses incurred by Landmark to effectuate the financing transactions as provided in the Loan Documents, the Post-Petition Loan Agreement and/or this Order, including, but not limited to, audit expenses, field examination expenses, title insurance costs, recording costs and fees of Landmark's counsel, all of which costs and expenses are included in the Post-Petition Loans.

31. Notwithstanding anything herein contained to the contrary, this Order shall be without prejudice to Landmark's rights under 11 U.S.C. §§506 and 507 should the adequate protection provided by Debtor hereunder subsequently be found by this Court to have been inadequate.

32. The Debtor does hereby remise, release, acquit and forever discharge Landmark, and all of its officers, directors, agents, employees, affiliates, subsidiaries, successors and assigns, and anyone claiming through or under them or any of them, of and from all manner of action, causes of action, claims and demands of every kind and nature whatsoever,

whether known or unknown, from the beginning of time to the date of these presents, that the Debtor had or may now have against Landmark as may have arisen, or may arise, in connection with any and all matters, including, but not limited to, all matters that were or could have been set forth in connection with the loan relationship between Hen House Interstate, Inc., and Landmark.

33. No expense of administration of Debtor's Chapter 11 case or any future proceeding which may develop out of such case, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against Landmark or the Collateral, whether pursuant to §506(c) of the Bankruptcy Code or otherwise, without the prior written consent of Landmark, and no such consent shall ever be implied from any other action, inaction or acquiescence by Landmark.

34. In the event Debtor fails to make any payment due under this Order or under the Post-Petition Loan Agreement, Landmark may provide written notice of said non-payment by telecopy, certified mail or hand-delivery to Debtor's counsel. If said payment is not made within two business days after said notice is so provided, the 11 U.S.C. §362(a) automatic stay shall be deemed terminated automatically without further Order of this Court and Landmark shall have all of the rights and remedies otherwise granted to it in this Order and under the Loan Documents and the Post-Petition Loan Agreement and applicable state law, including, without limitation, the rights of set-off, peaceable repossession, foreclosure and contacting Debtor's account debtors to collect receivables. In the event Debtor fails to comply with

the terms hereof, other than any payment terms contained in this Order and in the Post-Petition Loan Agreement, Landmark may so advise counsel for Debtor by telecopy, certified mail or hand-delivery and, if the default is not cured within two business days of said notice, may apply to the Court for a hearing thereon at the earliest practical time and date. In the proceedings on any such application, Debtor shall have the burden of proving that Debtor is in full compliance with the terms of this Order and the Post-Petition Loan Agreement. A ruling by the Court that Debtor has failed to meet its burden of proof on that issue shall result in an immediate termination of the 11 U.S.C. §362(a) automatic stay with respect to Landmark and the Collateral. No party in interest shall have the right to contest the enforcement of this paragraph based on any assertion that Landmark's interests in the Collateral are adequately protected or on any other ground except the non-existence of an alleged default as set forth above, and no party in interest shall have the right to seek injunctive relief under §105 of the Bankruptcy Code inconsistent with the terms of this paragraph. Until all obligations of the Debtor to Landmark shall have been indefeasibly satisfied in full: (i) No party-in-interest other than Landmark shall foreclose or otherwise seek to enforce any lien, junior lien or other rights such other party may have in and to any property of the estate of Debtor upon which Landmark holds or asserts a lien or security interest; and (ii) upon and after the occurrence of any failure by Debtor to comply with any provision of this Order, Landmark, in its sole discretion, in connection with a liquidation of any Collateral may use any real property, equipment, trademarks, trade names, patents or any other assets of Debtor that are owned by or subject to a lien of any third party and that are

used by Debtor in its business, without the payment of fees or rentals by Landmark to such third parties.

35. Landmark shall be entitled to the full protection of 11 U.S.C. §364(e) with respect to the debts, obligations, liens and security interests created or authorized in this Order in the event that this Order or any authorization contained herein is vacated, reversed or modified on appeal or otherwise by any court of competent jurisdiction.

36. There shall not at any time be entered in Debtor's Chapter 11 case or any subsequent Chapter 7 case any further order which authorizes: (i) the use of Cash Collateral by Debtor or the sale, lease or other disposition of property of the estate of the Debtor in which Landmark has an interest; or (ii) under 11 U.S.C. §364, the obtaining of credit or the incurring of indebtedness secured by a lien or security interest that is equal or senior to a lien or security interest held by Landmark, or that is entitled to priority administrative status which is equal or superior to that granted to Landmark herein, unless, in each instance: (a) Landmark shall have given its prior written consent thereto, provided that no such consent shall ever be implied from any other action, inaction or acquiescence by Landmark; and (b) such order of this Court requires that there shall first be indefeasibly paid in full to Landmark all obligations of Debtor to Landmark.

37. The security interests and liens granted to Landmark hereunder or otherwise, the obligations of the Debtor to Landmark and the Collateral shall not be altered, modified, extended, discharged, impaired or affected by any plan of reorganization, except upon the prior written consent of Landmark.

38. The Debtor is hereby prohibited from seeking an injunction pursuant to 11 U.S.C. §105, or otherwise, to limit or delay Landmark from realizing upon the Collateral.

39. In determining to make advances to the Debtor under the Post-Petition Loan Agreement or to collect such indebtedness and obligations, Landmark shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or an "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Internal Revenue Code, as amended, or any other Federal or state statute).

40. Debtor shall serve a copy of this Order on all parties listed on its List of Twenty Largest Creditors by first-class mail, postage prepaid within three days following the entry hereof. In accordance with Bankruptcy Rules 4001(c) and (d), any creditor or party in interest who objects to the continued effect of this Order shall have until 4:30 p.m. on September 23, 1991, within which to file such objection in writing with this Court and simultaneously serve such objection on the following:

David A. Warfield, Esq.
Husch & Eppenberger
100 North Broadway
St. Louis, Missouri 63102
Telephone: (314) 421-4800
Telecopy: (314) 421-0239

Carl J. Spector, Esq.
Bryan, Cave, McPheeters
& McRoberts
500 N. Broadway, Ste. 2000
St. Louis, Missouri 63102
Telephone: (314) 231-8600
Telecopy: (314) 231-5817

41. In the event such an objection is timely filed, this Order shall be treated as a preliminary Order pursuant to Bankruptcy Rules 4001(c) and (d) and may be affirmed, modified or vacated following a final hearing on the Debtor's Motion and the Landmark Motion, which final hearing shall be held on September 25, 1991, at 9:30 a.m. pursuant to Bankruptcy Rule 4001, provided, however, that the post-petition loans, advances, and credits, and the liens securing the same, shall not be affected by any such objection. If by 4:30 p.m. on September 23, 1991, no such objection has been filed, this Order shall be automatically deemed to have been entered pursuant to a final hearing on the Debtor's Motion and the Landmark Motion, in accordance with Bankruptcy Rule 4001, at which time this Order shall be deemed a final Order. If, however, any such objection is filed, this Order nevertheless shall remain in full force and effect pending the entry of an order pursuant to a final hearing. If (i) a final Order approving in all respects the terms of this Order is not entered within 20 days from the date hereof, or (ii) an order is entered at any time that terminates or modifies in any way the provisions of this Order, then Landmark shall have no further obligations to the Debtor whatsoever and the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark immediately shall be due and payable.

42. The rights and liens granted and adjudications made herein as to Landmark, and the obligations and duties of the Debtor herein, shall be binding and valid against the Debtor, all creditors and parties-in-interest in this proceeding and any successor(s) of Debtor, including any Chapter 7 trustee appointed in the present or any subsequent proceedings under

the Bankruptcy Code and shall survive the termination, modification or expiration of this Order, or any termination of the present proceedings, whether by confirmation of a plan, dismissal, conversion or otherwise. Landmark shall not be required to take any further actions or make any filings to perfect said rights and liens. If, however, Landmark shall, in its sole discretion, elect for any reason to file any financing statements, mortgages, deeds of trust or other documents with respect to such security interests and liens, the Debtor promptly shall execute same upon Landmark's request and all such financing statements, mortgages, deeds of trust and other documents shall be deemed to have been filed or recorded at the time and on the date of commencement of this Chapter 11 case. Landmark may, in its sole discretion, file a certified copy of this Order in any filing or recording office in any county or other jurisdiction in which the Debtor has real or personal property and, in such event, the subject filing or recording officer is authorized and directed to file or record such certified copy of this Order.

43. This Order may be extended from time to time without further hearing, upon written agreement of Debtor and Landmark and upon notice to the Court and to those parties as the Court may designate from time to time.

DATED: September 6, 1991

s/ David P. McDonald
UNITED STATES BANKRUPTCY
JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

HEN HOUSE INTERSTATE, INC. Debtor and Debtor-in-Possession	LANDMARK BANK OF ILLINOIS
By /s/ David A. Warfield David A. Warfield Husch & Eppenberger 100 North Broadway St. Louis, Missouri 63102 (314) 421-4800 Its Attorneys	By /s/ Carl J. Spector Carl J. Spector Karen W. Fries Bryan, Cave, McPheeters & McRoberts 500 N. Broadway, Suite 2000 St. Louis, Missouri 63102 (314) 231-8600 Its Attorneys

ATTACHMENT 1

HEN HOUSE INTERSTATE
CASH FLOW

PAGE 1 OF 2

ATTACHMENT 1

NEW HOUSE INTERSTATE
CASH FLOW C:\92CF8DMM
09/03/91

	SEP FRI 6TH	SEP SAT 7TH	SEP SUN 8TH	SEP MON 9TH	SEP TUES 10TH	SEP WED 11TH	SEP THUR 12TH	SEP FRI 13TH	SEP SAT 14TH	SEP SUN 15TH	SEP MON 16TH	SEP TUES 17TH	SEP WED 18TH
PRIOR DAY BALANCE	47.021	(857)	(857)	(857)	35.520	18.216	45.366	45.066	(32.964)	(32.964)	(32,964)	(14,911)	(14,9
CASH IN:													
WIRE TRANSFER	28.500			74,000		29.000		29.000			66000		28,0(
MUNCI DEPOSITS													
MISC DEPOSIT				500							500		
CC DEPOSIT	1,600			2,500		1,000		1,000			2.60C		:.0(
FUEL DEPOSI:				15,200							12.000		
PAYROLL CASH OUT:													
CORP PAYROL:	5.707							5,600					
UNIT PAYROLL	28.363							42,000					
PAYROLL TAXES	17.235							24.000					
MANUAL P/R CHECKS	12,900												
INSURANCE:													
HEALTH	8.600												
WORKERS COMP													
G/L PROPERTY	2.158												
TAXES:													
NO SALES				7,471									
KS SALES													
IN SALES				2.700									
IL SALES				7,000							6,947		
OTHER CASH DISBURSED													
Prairie Farms Dairy				0				20,000			40,000		
Utilities deposits													
Utilities													
Rents				5,000									
Billboards								13,186					
COD FUEL				15,000							10,500		
COD FOOD						1,300							5.00(
COD R&M	2,100							2,100					
COD SERVICE				3,000			300						2.0(
COD LINEN				750									
COD OUTSIDE SERVICE					5,000	1,350		1,350					
MUNCI CASH DISBURSED				14,902	12304						5,000		
DAILY BALANCE	(857)	(857)	(857)	35,520	18,216	45,366	45,066	(32,964)	(32,964)	(32,964)	(14,911)	(14,911)	7,069

BEST AVAILABLE COPY

HEN HOUSE INTERSTATE
CASH FLOW

PAGE 2 OF 2

SEP THUR 19TH	SEP FRI 20TH	SEP SAT 21ST	SEP SUN 22ND	SEP MON 23RD	SEP TUES 24TH	SEP WED 25TH	SEP THUR 26TH	SEP FRI 27TH	SEP SAT 28TH
7,089	7,089	(31,861)	(31,861)	(31,861)	(33,761)	(33,761)	(4,761)	(4,761)	(30,611)
	28,000			69,000		26,000		28,000	
				500					
	1,000			2,000		1,000		1,000	
				12,700					
	5,100							5,400	
	27,000							42,000	
	17,500							24,500	
	8,700								
				3,500					
	2,700								
				6,500					
				60,000					
	3,500								
				11,100					
	2,100							2,100	
	1,350							1,350	
				3,000					
7,089	(31,861)	(31,861)	(31,861)	(33,761)	(33,761)	(4,761)	(4,761)	(30,611)	(30,611)

Emergency Order to Obtain Post-Petition Secured Credit

HEN HOUSE INTERSTATE
RESTAURANT & CORPORATE
OVERHEAD BUDGET

STORES TO CLOSE	SEP 13 STORES -- 3 WEEKS	OCT 13 STORES -- 4 WEEKS	NOV 13 STORES PKS, 097 4 WEEKS	DEC 12 STORES LED 3 WEEKS	JAN 11 STORES CAR 4 WEEKS	FEB 11 STORES -- 4 WEEKS	MAR 11 STORES -- 3 WEEKS	APR 11 STORES -- 4 WEEKS	MAY 11 STORES -- 4 WEEKS	JUN 11 STORES -- 3 WEEKS	JUL 11 STORES -- 4 WEEKS	AUG 11 STORES -- 4 WEEKS	SEP 11 STORES -- 3 WEEKS	13 MONTHS ENDED SEP 92 TOTAL
NET FOOD	390,000	463,100	603,603	395,726	276,782	308,742	421,500	392,500	441,000	334,300	322,200	317,500	344,700	5,023,762
NET GIFT	9,375	7,500	6,500	7,500	5,500	5,500	8,500	7,500	7,500	10,000	10,000	10,000	12,500	107,875
TOTAL SALES	699,183	870,600	810,103	603,226	282,283	314,242	430,000	400,000	448,500	344,300	332,200	327,500	339,200	5,913,577
FOOD (LESS CREDITS & REBATES)	143,572	137,344	110,990	100,825	76,115	94,904	118,820	109,900	123,480	133,820	146,216	103,500	133,076	1,621,782
GIFTS	3,625	4,500	3,900	4,500	3,300	3,300	5,100	4,500	4,500	6,000	6,000	6,000	7,500	68,725
TOTAL COST OF GOODS SOLD	169,197	131,844	114,890	113,325	79,415	98,204	123,120	114,400	127,980	141,820	152,216	109,500	140,576	1,686,367
GROSS MARGIN	434,986	338,776	295,213	289,901	202,868	226,038	306,880	285,600	320,520	604,480	379,984	373,000	398,624	6,257,870
PAYROLL	137,000	120,720	110,829	114,919	92,153	97,415	129,600	112,000	121,995	107,290	138,372	133,850	130,984	1,670,115
PAYROLL TAX	20,249	16,076	14,901	14,813	12,007	12,557	15,652	14,560	15,742	14,148	17,998	17,661	19,678	210,082
WORKERS COMPENSATION	8,592	8,592	8,592	8,592	8,592	8,592	8,600	8,600	8,600	8,600	8,600	8,600	8,600	111,732
BENEFITS	3,142	3,118	2,871	2,873	2,775	2,922	3,010	2,800	3,027	3,482	3,459	3,396	3,775	60,871
MANAGER BONUS	1,500	1,500	1,300	1,200	1,100	1,100	1,200	1,200	1,200	1,200	1,200	1,200	1,200	16,100
TOTAL LABOR EXPENSE	170,571	154,006	142,393	142,397	117,647	122,586	148,862	139,160	149,663	179,920	169,629	164,707	184,187	2,067,270
OPERATING SUPPLIES	10,870	11,579	11,100	11,072	8,303	9,262	8,030	7,850	8,020	11,130	10,040	10,250	10,934	130,040
SMALLWARES/UTENSILS	3,990	4,632	4,036	3,936	3,333	3,693	4,323	3,888	4,615	8,340	7,833	7,688	8,201	82,384
LINEN/UNIFORMS	3,750	3,000	2,600	3,000	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	32,150
MENUS/GUEST CHECKS	300	300	260	240	220	220	220	220	220	220	220	220	220	3,060
OUTSIDE SERVICES	6,750	6,750	5,850	5,400	4,950	4,950	4,950	4,950	4,950	4,950	4,950	4,950	4,950	69,300
EQUIPMENT LEASES	2,025	2,025	1,755	1,620	1,485	1,485	1,485	1,485	1,485	1,485	1,485	1,485	1,485	20,790
REPAIRS & MAINTENANCE	10,500	10,500	9,100	8,400	7,700	7,700	7,700	7,700	7,700	7,700	7,700	7,700	7,700	107,800
ADVERTISING / BILLBOARD	13,100	11,769	11,170	11,095	9,631	9,750	9,200	9,200	9,200	9,200	9,200	9,200	9,200	131,199
PROMOTION	1,000	1,000	1,560	1,040	1,320	1,320	1,320	1,320	1,320	1,320	1,320	1,320	1,320	18,480
WASTE/ QUALITY CONTROL	1,200	1,200	1,040	960	880	880	880	880	880	880	880	880	880	11,760
UTILITIES	32,500	32,500	43,500	43,000	43,000	42,000	39,000	39,000	39,000	39,000	39,000	39,000	39,000	533,500
TELEPHONE	2,250	2,250	1,950	1,800	1,650	1,650	1,800	1,650	1,650	1,800	1,650	1,650	1,800	23,350
CREDIT CARD EXPENSE	2,115	1,671	1,413	1,382	973	1,000	1,200	1,200	1,200	1,200	1,200	1,200	1,200	16,900
CASH OVER/SHORT	1,000	900	900	900	750	750	700	700	700	700	700	700	700	10,100
OFFICE SUPPLIES	1,500	1,500	1,500	1,200	1,100	1,100	1,000	1,000	1,000	1,000	1,000	1,000	1,000	14,700
TOTAL OPERATING	89,680	82,326	79,338	80,245	69,697	69,950	66,328	65,163	66,860	91,053	89,202	89,363	90,710	1,230,621
RENT/ALLOCATION	16,668	16,668	16,668	12,248	12,248	12,248	12,248	12,248	12,248	12,248	12,248	12,248	12,248	165,829
RENT OVERAGE	0	3,000	0	0	2,250	0	0	2,250	0	0	3,000	0	0	10,500
INSURANCE	3,150	3,150	3,150	3,150	3,150	3,150	3,150	3,150	3,150	3,150	3,150	3,150	3,150	41,850
TOTAL FIXED EXPENSE	19,818	22,818	19,818	15,398	17,648	15,398	15,398	17,648	15,398	15,398	18,398	15,398	15,398	218,179
RESTAURANT NET INCOME (CASH)	107,121	31,838	33,676	31,853	(22,132)	(1,904)	36,204	63,621	68,589	108,307	102,756	101,575	100,322	881,332
CORPORATE OVERHEAD (CASH)	33,379	46,792	46,792	33,379	46,792	46,792	33,379	46,792	46,792	33,379	46,792	46,792	33,379	631,731
NET INCOME/(LOSS) (CASH)	31,742	5,046	(13,116)	(23,526)	(68,924)	(48,696)	903	13,171	21,797	62,923	33,164	54,733	32,943	130,121 --313 stores

HEN HOUSE INTERSTATE
OMNI OUTDOOR ADVERTISING
BUDGET PROJECTION
SEPTEMBER 30, 1992

PAGE 1 OF 2

C:calc992

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	TOTAL ACCOUNTS FY92
3010 SALES - NATIONAL POSITIVE	3,300.00	3,300.00	3,300.00	2,500.00	3,300.00	4,000.00	4,000.00	3,000.00	3,000.00	3,300.00	2,500.00	3,000.00	36,300.00
3020 SALES - LOCAL POSITIVE	36,000.00	36,000.00	36,000.00	36,000.00	30,300.00	32,000.00	34,000.00	34,000.00	36,000.00	32,000.00	34,500.00	65,000.00	419,000.00
3030 SALES - NATIONAL PRIORITY	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	15,600.00
3040 SALES - LOCAL PRIORITY	9,300.00	9,000.00	9,750.00	9,750.00	10,000.00	10,000.00	12,500.00	12,000.00	10,000.00	11,500.00	10,500.00	11,000.00	125,300.00
3075 SALES - OTHER	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	1,800.00
3110 AGENCY COMMISSIONS - POSITIVE	11,000.00	11,000.00	11,000.00	11,300.00	11,475.00	11,850.00	11,700.00	11,700.00	11,000.00	11,600.00	11,775.00	12,750.00	139,750.00
3120 AGENCY COMMISSIONS - PRIORITY	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00	165.00	1980.00
3130 CONTINUITY DISCOUNTS - POSITIVE	750.00	900.00	900.00	300.00	330.00	375.00	250.00	900.00	900.00	300.00	450.00	300.00	5,375.00
3140 CONTINUITY DISCOUNTS - PRIORITY	80.00	80.00	90.00	80.00	80.00	90.00	80.00	80.00	80.00	80.00	80.00	80.00	960.00
3220 ILLUMINATION CREDITS - POSITIVE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3230 ILLUMINATION CREDITS - PRIORITY	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL INCOME	847,615.00	850,363.00	854,715.00	842,725.00	848,370.00	850,990.00	850,615.00	849,162.00	847,865.00	847,163.00	847,690.00	857,345.00	8383,895.00

EXPENSES

		OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY92
0160 AUTO ALLOWANCE	1	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,200.33	711.75	12,000.00
0180 AUTO LEASE EXPENSE	2	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	330.00	3,960.00
0170 AUTO EXPENSE	3	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	7,200.00
0210 BAD DEBT EXPENSE	4	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00
0030 SALES COMMISSIONS	5	2,370.75	2,370.75	2,505.75	2,115.75	2,019.50	2,349.50	2,330.75	2,450.75	2,253.75	2,250.75	2,309.50	2,075.75	29,150.75
0130 CONTRACTED CARE HOME	6	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	3,600.00
0000 CONTRACTED DISPOSITION	7	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
0110 CONTRACTED POSITIVE	8	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
0120 CONTRACTED ART DESIGN	9	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
0250 CONTRIBUTIONS	10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
0110 DEPR - SHOP EQUIP	11	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	780.00	780.00
0115 DEPR EXP - L/H IMPROVEMENTS	12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
0150 SHORT L/H ACQUISITION COSTS	13	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5100 DEPR - PRINTS PLANT	14	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	36,000.00
4300 DEPRECIATION - PURCHASE	15	11,300.00	11,300.00	11,300.00	11,300.00	11,300.00	11,300.00	11,300.00	11,300.00	11,300.00	11,300.00	11,300.00	11,300.00	135,600.00
0130 DEPR - PRESS AND FRAMES	16	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	7,200.00
0305 DEPR - BUILDING	17	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	3,600.00
0320 DEPR - FURN AND FIX	18	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00
0330 DEPR - OFFICE EQUIP	19	175.00	175.00	175.00	175.00	175.00	175.00	175.00	175.00	175.00	175.00	175.00	175.00	2,100.00
0340 DUES AND SUBSCRIPTIONS	20	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	900.00
0570 INSURANCE - GROUP	21	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,100.00	1,600.00	1,600.00	1,600.00	19,700.00
0106 CONTRIBUTIONS	22	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	225.00	2,700.00
4570 DUES CHAMBER DENTAL - PRESALES	23	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
4310 CONSULT - SUBSCRIBERS	24	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	120.00
0150 INSURANCE - PROPERTY	25	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
0510 INSURANCE - AUTOS/TRUCKS	26	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	9,600.00
4560 INSURANCE - WORKMEN'S COMP	27	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	600.00	7,200.00
0530 INSURANCE - LIABILITY	28	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	3,300.00
9010 INTEREST EXPENSE	29	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9050 MANAGEMENT FEES	30	2,370.75	2,370.75	2,505.75	2,115.75	2,019.50	2,349.50	2,330.75	2,450.75	2,253.75	2,250.75	2,309.50	2,075.75	29,150.75
5210 MATERIAL - ILLUS - PRINTS	31	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
5250 DYNO MATERIALS - PRINTS	32	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	720.00
5210 MATERIAL - PAINT SUPPLIES	33	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	1,800.00
4250 MATERIALS - STEEL & PIPE - P34		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
4250 MATERIALS - PAPER AND PASTES	35	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	10,800.00	10,800.00

[illegible] Budget Projection 9/30/92 Level C:calc992 03-Dec-91 Page 2

		TOTAL ACCOUNTS FY92		SUMMARY ACCOUNTS FY92	
36,300.00 Sales					1
419,000.00 Sales					1
15,600.00 Sales					1
125,300.00 Sales					1
1,800.00 Sales					1
139,750.00 Sales					1
1980.00 Sales					1
5,375.00 Sales					1
960.00 Sales					1
0.00 Sales					1
0.00 Sales					1
8383,895.00	Net Sales		Net Sales		
12,000.00 Auto expense					1
3,960.00 Auto expense					1
7,200.00 Auto expense	Auto expense		Auto expense		1
1,200.00 Bad Debt expense	Bad Debt expense		Bad Debt expense		1
29,150.75 Commissions	Commissions		Commissions		1
3,600.00 Contract work					1
0.00 Contract work					1
0.00 Contract work					1
0.00 Contract work	Contract work		Contract work		1
0.00 Contributions	Contributions		Contributions		1
780.00 Depreciation					1
0.00 Depreciation					1
0.00 Depreciation					1
36,000.00 Depreciation					1
135,600.00 Depreciation					1
7,200.00 Depreciation					1
3,600.00 Depreciation					1
1,200.00 Depreciation					1
2,100.00 Depreciation	Depreciation		Depreciation		1
900.00 Dues & Subscriptions	Dues & Subscriptions		Dues & Subscriptions		1
19,700.00 Employee benefits	Employee benefits		Employee benefits		1
2,700.00 Entertainment	Entertainment		Entertainment		1
600.00 Equipment rental	Equipment rental		Equipment rental		1
120.00 Freight	Freight		Freight		1
600.00 Insurance					1
9,600.00 Insurance					1
7,200.00 Insurance					1
3,300.00 Insurance	Insurance		Insurance		1
0.00 Interest Expense	Interest Expense		Interest Expense		1
29,150.75 Management fees	Management fees		Management fees		1
600.00 Materials-Paint					1
720.00 Materials-Paint					1
1,800.00 Materials-Paint	Materials-Paint		Materials-Paint		1
0.00 Materials-Paster					1
10,800.00 Materials-Paster					1

HEN HOUSE INTERSTATE
OMNI OUTDOOR ADVERTISING
BUDGET PROJECTION
SEPTEMBER 30, 1992

PAGE 2 OF 2

[illegible]		OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	Total Accounts FY0
[illegible] BINGO	36	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
[illegible] - ELVIS POSTERS	37	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
[illegible] - CONCRETE - POSTERS	38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
BINGO EXPENSES - POSTERS	39	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	396.00
[illegible]	40	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00
BINGO EXPENSE - PRIZES	41	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	120.00
OFFICE SUPPLIES	42	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	1,500.00
PHOTOGRAPHY EXPENSE	43	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
P/R TAXES - FUTA	44	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	120.00
P/R TAXES - FICA - PRINTS	45	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00
P/R TAXES - SUI - PRINTS	46	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	30.00
P/R TAXES - FUTA - POSTERS	47	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	216.00
P/R TAXES - SUI	48	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	72.00
P/R TAXES - FICA - POSTERS	49	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	6.00
P/R TAXES - SUI - POSTERS	50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
P/R TAXES - FUTA - PRINTS	51	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	84.00
P/R TAXES - FICA	52	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	700.00	8,400.00
POSTAGE, EXPRESS AND FREIGHT	53	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00
PROFESSIONAL FEES	54	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
REPAIRS AND MAINT	55	575.00	575.00	575.00	575.00	575.00	575.00	575.00	575.00	575.00	575.00	575.00	575.00	6,900.00
SALARIES - SALES	56	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	2,600.00	31,200.00
SALARY - OFFICE/POSTERS	57	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	60,000.00
SALARY - PRINTERS	58	1,250.00	1,250.00	1,250.00	1,250.00	1,250.00	1,250.00	1,250.00	1,250.00	1,250.00	1,250.00	1,250.00	1,250.00	15,000.00
SALARIES - ADMIN	59	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	60,000.00
SUPPLIES - WELDING	60	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	120.00
SUPPLIES - SHOP	61	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	2,400.00
SITE LEASES - POSTERS	62	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	42,000.00
SITE LEASES - PRINTS	63	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	18,000.00
TAXES AND LICENSES	64	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	800.00	9,600.00
TAX PENALTIES	65	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TRAVEL	66	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	900.00
TELEPHONE	67	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	5,400.00
UTILITIES	68	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ELECTRICITY - POSTERS	69	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	10,800.00
ELECTRICITY - PRINTS	70	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	3,000.00
UTILITIES	71	325.00	325.00	325.00	325.00	325.00	325.00	325.00	325.00	325.00	325.00	325.00	325.00	3,900.00
TOTAL EXPENSES		$32,695.00	$33,010.00	$33,129.00	$32,329.00	$31,996.00	$33,056.00	$32,019.00	$32,076.00	$32,644.00	$32,674.00	$33,013.00	$31,439.00	$391,995.00
OTHER INCOME		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
GAIN / LOSS SALE OF ASSETS		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PROVISION FOR TAXES		500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	6,000.00
OTHER INCOME & EXPENSE		500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	6000.00
NET PROFIT/(LOSS)		($3,695.00)	($3,845.00)	($3,815.00)	($4,015.00)	($3,996.00)	($4,044.00)	($3,844.00)	($4,109.00)	($3,999.00)	($3,945.00)	($3,725.00)	($3,694.13)	($45,390.00)

Detail Accounts FY0		Summary Accounts FY0	
600.00 Materials-Poster			1
600.00 Materials-Poster			1
0.00 Materials-Poster	Materials-Poster	12,000.00	Materials-Poster 1
420.00 Miscellaneous			1
1,200.00 Miscellaneous			2
120.00 Miscellaneous-Poster	Miscellaneous expense	1,740.00	Miscellaneous-Post 1
1,500.00 Office Supplies			2
0.00 Office Supplies	Office supplies	1,500.00	Office supplies 2
129.00 Payroll Taxes			1
1,200.00 Payroll Taxes			1
28.00 Payroll Taxes			1
216.00 Payroll Taxes			1
72.00 Payroll Taxes			1
6.00 Payroll Taxes			1
48.00 Payroll Taxes			1
84.00 Payroll Taxes			1
8,400.00 Payroll Taxes	Payroll Taxes	10,170.00	Payroll Taxes 1
1,200.00 Postage	Postage	1,200.00	Postage 2
0.00 Professional Fees	Professional Fees	0.00	Professional Fees 2
6,900.00 Repairs & Maintenance	Repairs & Maintenance	6,900.00	Repairs & Maintenan 2
31,200.00 Salaries			1
60,000.00 Salaries			1
15,000.00 Salaries			1
60,000.00 Salaries	Salaries	166,200.00	Salaries 2
120.00 Shop Supplies			1
2,400.00 Shop Supplies	Shop Supplies	2,520.00	Shop Supplies 1
42,000.00 Site Leases			1
18,000.00 Site Leases	Site Leases	84,000.00	Site Leases 1
9,600.00 Taxes & Licenses			2
0.00 Taxes & Licenses			2
900.00 Taxes & Licenses	Taxes & Licenses	10,500.00	Taxes & Licenses 1
5,400.00 Telephone	Telephone	5,400.00	Telephone 2
0.00 Travel	Travel	0.00	Travel 2
10,800.00 Utilities			1
4,200.00 Utilities			1
3,900.00 Utilities			1
$433,395.00			
0.00			
0.00			
6,000.00			
6000.00			
($33,390.00)			

TOTAL EXPENSES	$431,395.00
NET INCOME (LOSS)	($50,790.00)
CASH FLOW PROJECTIONS:	
NET INCOME (LOSS)	($50,790.00)

Detail Accounts FY0		Summary Accounts FY0
Net Depreciation		$85,200.00
Management Fees		79,150.25
Projected cash flow		($43,039.75)

BEST AVAILABLE COPY

FINAL ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION AUTHORIZING DEBTOR TO OBTAIN POST-PETITION SECURED CREDIT, GRANTING SENIOR LIENS AND ADMINISTRATIVE PRIORITY EXPENSE, MODIFYING AUTOMATIC STAY, PROVIDING ADEQUATE PROTECTION, AND AUTHORIZING AGREEMENTS WITH LANDMARK BANK OF ILLINOIS DATED OCTOBER 25, 1991

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Proceedings Under Chapter 11

Case No. 91-45623-293

Motions E and F

In Re:

HEN HOUSE INTERSTATE, INC.,

Debtor.

FINAL ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION SECURED CREDIT, GRANTING SENIOR LIENS AND ADMINISTRATIVE PRIORITY EXPENSE, MODIFYING AUTOMATIC STAY, PROVIDING ADEQUATE PROTECTION AND AUTHORIZING AGREEMENTS WITH LANDMARK BANK OF ILLINOIS

Final Order to Obtain Post-Petition Secured Credit

This matter is before the Court for a final hearing on Debtor's *Emergency Motion For Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §364, to Utilize Cash Collateral Pursuant to 11 U.S.C. §363, and Granting Adequate Protection to Pre-Petition Secured Party* (the "Debtor's Motion") filed by the above Debtor and for a final hearing on the *Emergency Motion for Relief From Automatic Stay or, in the Alternative for Adequate Protection, and for Order Denying Use of Cash Collateral and Requiring Segregation and Accounting of Cash Collateral* (the "Landmark Motion") filed by Landmark Bank of Illinois ("Landmark"), the Court having entered an *Emergency Order Authorizing Debtor to Obtain Post-Petition Secured Credit, Granting Senior Liens and Administrative Priority Expense, Modifying Automatic Stay, Providing Adequate Protection and Authorizing Agreements with Landmark Bank of Illinois* (the "Emergency Order") on September 6, 1991, the Debtor having provided more than 15 days notice to the Debtor's 20 largest unsecured creditors, the United States Trustee and Landmark of the final hearing on these matters and of the opportunity to object, timely objections to the Emergency Order becoming final having been filed by the United States Trustee, Allen Foods, Inc., and Adrian N. Baker and Company, the Court having allowed Larry Rugg to file a late objection, the Court having entered an Order on October 22, 1991, sustaining certain objections to the original form of final order submitted to the Court, Debtor and Landmark having filed on October 24, 1991, a *Joint Motion for Reconsideration of Court's Order of October 22, 1991* (the "Reconsideration Motion"), pursuant to which a modified form of final order was submitted to the Court containing modifications substantially in compliance

with the rulings contained in the Court's October 22, 1991, Order and pursuant to which the Debtor and Landmark requested the Court to reconsider its ruling on certain matters, Debtor and Landmark having agreed to the entry of this Order, the relief granted hereby and the terms and conditions herein set forth, and on the basis of representations made and testimony received from the Debtor, and upon the record in these Chapter 11 proceedings, the Court finds and determines that it is in the best interests of Debtor's estate and its creditors and that there is good cause to grant the relief requested in the Reconsideration Motion, the Debtor's Motion and the Landmark Motion herein provided. The Court finds, after considering all the testimony in this matter and after reviewing the documents submitted into evidence, that the Debtor has a reasonable possibility of reorganizing if the Court grants the relief provided herein. The Court finds that the Debtor does not otherwise have funds available to meet payroll and other necessary expenses, that the Debtor is unable to obtain credit other than on the basis provided herein, that the ability of the Debtor to continue its business, remain a viable entity and have an opportunity to reorganize under Chapter 11 of the Bankruptcy Code depends on obtaining post-petition secured financing from Landmark on the terms provided herein, and that absent the relief provided herein, Debtor's estate would suffer immediate and irreparable harm. The Court finds that the notice hereof having been provided is, under the circumstances, adequate and sufficient and complies with the requirements of 11 U.S.C. §§102(1) and 361 through 364 and Bankruptcy Rule 4001, and any notice periods in excess hereof are hereby shortened to conform to the notices given herein. The Court further finds that Debtor and Landmark have acted in good

faith (as used in §364(e) of the Bankruptcy Code) with respect to the extension of credit authorized pursuant to this Order and all other aspects of this Order, and that the relief requested and the terms and conditions set forth herein are in the best interests of Debtor's estate and its creditors.

ACCORDINGLY, IT IS, HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, as this matter arises in the Chapter 11 case of Debtor. No trustee has been appointed and Debtor has remained in possession of its estate.

2. Landmark is the holder of a certain revolving line of credit note, executed and delivered by the Debtor as of June 2, 1987 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $350,000.00 with interest thereon, as more fully set forth therein (the "Revolving Note"). A true and correct copy of the Revolving Note has been filed by Landmark under separate cover as Exhibit 1 to the Landmark Motion and is incorporated herein by reference.

3. Landmark is the holder of a certain term promissory note, executed and delivered by the Debtor as of June 2, 1987 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $4,460,000.00 with interest thereon, as more fully set forth therein (the "Term Note"). A true and correct copy of the Term Note has been filed by Landmark under separate cover as Exhibit 2 to the Landmark Motion and is incorporated herein by reference.

4. Landmark is the holder of a certain promissory note, executed and delivered by the Debtor as of March 31, 1991 in consideration of a loan by Landmark to the Debtor, wherein the Debtor promised to pay to Landmark the principal sum of $53,000.00 with interest thereon as more fully set forth therein (the "Promissory Note"). A true and correct copy of the Promissory Note has been filed by Landmark under separate cover as Exhibit 3 to the Landmark Motion and is incorporated herein by reference.

5. The Revolving Note and Term Note were amended pursuant to a First Amendment to Promissory Notes ("First Amendment to Notes") dated December 28, 1990. A true and correct copy of the First Amendment to Notes has been filed by Landmark under separate cover as Exhibit 4 to the Landmark Motion and incorporated herein by reference. The Revolving Note, Term Note, First Amendment to Notes and Promissory Note are hereinafter collectively referred to as the "Notes").

6. In connection with the execution of the Notes, the Debtor and Landmark entered into a loan agreement executed May 15, 1987 (the "Original Loan Agreement"). A true and correct copy of the original Loan Agreement has been filed by Landmark under separate cover as Exhibit 5 to the Landmark Motion and is incorporated herein by reference.

7. The Loan Agreement was amended pursuant to a First Amendment to Loan Agreement ("Loan Agreement Amendment #1") dated December 28, 1990. A true and correct copy of the Loan Agreement Amendment #1 has been filed by Landmark under separate cover as Exhibit 6 to the Landmark Motion and is incorporated herein by reference.

8. The Loan Agreement was again amended pursuant to a Second Amendment to Loan Agreement ("Loan Agreement Amendment #2") dated March 31, 1991. A true and correct copy of the Loan Agreement Amendment #2 has been filed by Landmark under separate cover as Exhibit 7 to the Landmark Motion and incorporated herein by reference. The original Loan Agreement, Loan Agreement Amendment #1 and Loan Agreement Amendment #2 are hereinafter collectively referred to as the "Loan Agreement."

9. The Debtor executed and delivered to Landmark the following documents in order to secure the repayment of all obligations of Debtor to Landmark:

a. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 1524, Page 727 in the records of the Recorder's Office of the County of Champaign, State of Illinois (the "Champaign County Mortgage"), which encumbers certain premises in the County of Champaign, State of Illinois, described more fully therein (the "Champaign County Premises"). A true and correct copy of the Champaign County Mortgage has been filed by Landmark under separate cover as Exhibit 8 to the Landmark Motion and is incorporated herein by reference.

b. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 148, Page 320 in the records of the Recorder's Office of the County of DeWitt, State of Illinois (the "DeWitt County Mortgage"), which encumbers certain premises in the County of DeWitt, State of Illinois, described more fully

therein (the "DeWitt County Premises"). A true and correct copy of the DeWitt County Mortgage has been filed by Landmark under separate cover as Exhibit 9 to the Landmark Motion and is incorporated herein by reference.

c. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 180011 in the records of the Recorder's Office of the County of Ford, State of Illinois (the "Ford County Mortgage"), which encumbers certain premises in the County of Ford, State of Illinois, described more fully therein (the "Ford County Premises"). A true and correct copy of the Ford County Mortgage has been filed by Landmark under separate cover as Exhibit 10 to the Landmark Motion and is incorporated herein by reference.

d. Deed of Trust given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 1775025 at I1683P226! et. seq. in the records of the Recorder's Office of the County of Jackson, State of Missouri (the "Jackson County Deed"), which encumbers certain premises in the County of Jackson, State of Missouri, described more fully therein (the "Jackson County Premises"). A true and correct copy of the Jackson County Deed has been filed by Landmark under separate cover as Exhibit 11 to the Landmark Motion and is incorporated herein by reference.

e. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 173, Page 518 in

the records of the Recorder's Office of the County of Laurel, State of Kentucky (the "Laurel County Mortgage"), which encumbers certain premises in the County of Laurel, State of Kentucky, described more fully therein (the "Laurel County Premises"). A true and correct copy of the Laurel County Mortgage has been filed by Landmark under separate cover as Exhibit 12 to the Landmark Motion and is incorporated herein by reference.

f. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 3423, Page 1266 in the records of the Recorder's Office of the County of Madison, State of Illinois (the "Madison County Mortgage"), which encumbers certain premises in the County of Madison, State of Illinois, described more fully therein (the "Madison County Premises"). A true and correct copy of the Madison County Mortgage has been filed by Landmark under separate cover as Exhibit 13 to the Landmark Motion and is incorporated herein by reference.

g. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 399, Page 485 in the records of the Recorder's Office of the County of Marion, State of Illinois (the "Marion County Mortgage"), which encumbers certain premises in the County of Marion, State of Illinois, described more fully therein (the "Marion County Premises"). A true and correct copy of the Marion County Mortgage has been filed by Landmark under separate cover as Exhibit 14 to the Landmark Motion and incorporated herein by reference.

h. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 87-10253 in the records of the Recorder's Office of the County of McLean, State of Illinois (the "McLean County Mortgage"), which encumbers certain premises in the County of McLean, State of Illinois, described more fully therein (the "McLean County Premises"). A true and correct copy of the McLean County Mortgage has been filed by Landmark under separate cover as Exhibit 15 to the Landmark Motion and is incorporated herein by reference.

i. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 374, Page 247 in the records of the Recorder's Office of the County of Morgan, State of Indiana (the "Morgan County Mortgage"), which encumbers certain premises in the County of Morgan, State of Indiana, described more fully therein (the "Morgan County Premises"). A true and correct copy of the Morgan County Mortgage has been filed by Landmark under separate cover as Exhibit 16 to the Landmark Motion and is incorporated herein by reference.

j. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 1987, Page 7516 in the records of the Recorder's Office of the County of Delaware, State of Indiana (the "Delaware County Mortgage"), which encumbers certain premises in the County of Delaware, State of Indiana, described more fully therein (the "Delaware County Premises"). A true and correct copy of the Delaware County Mortgage has

been filed by Landmark under separate cover as Exhibit 17 to the Landmark Motion and is incorporated herein by reference.

k. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded in Book 2676, Page 1130 in the records of the Recorder's Office of the County of St. Clair, State of Illinois (the "St. Clair County Mortgage"), which encumbers certain premises in the County of St. Clair, State of Illinois, described more fully therein (the "St. Clair County Premises"). A true and correct copy of the St. Clair County Mortgage has been filed by Landmark under separate cover as Exhibit 18 to the Landmark Motion and is incorporated herein by reference.

l. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number 167252 in Book 367, Page 345 in the records of the Recorder's Office of the County of Washington, State of Illinois (the "Washington County Mortgage"), which encumbers certain premises in the County of Washington, State of Illinois, described more fully therein (the "Washington County Premises"). A true and correct copy of the Washington County Mortgage has been filed by Landmark under separate cover as Exhibit 19 to the Landmark Motion and is incorporated herein by reference.

m. Mortgage given by the Debtor to Landmark dated May 15, 1987 and recorded as Document Number R87-28965 in the records of the Recorder's Office of

the County of Will, State of Illinois (the "Will County Mortgage"), which encumbers certain premises in the County of Will, State of Illinois, described more fully therein (the "Will County Premises"). A true and correct copy of the Will County Mortgage has been filed by Landmark under separate cover as Exhibit 20 to the Landmark Motion and is incorporated herein by reference.

n. Collateral Pledge Agreement by the Debtor to Landmark dated May 15, 1987 (the "Collateral Pledge") wherein Debtor pledged to Landmark a certificate of deposit and other items as more fully described therein. A true and correct copy of the Collateral Pledge has been filed by Landmark under separate cover as Exhibit 21 to the Landmark Motion and is incorporated herein by reference.

o. Security Agreement-Equipment by the Debtor to Landmark dated May 15, 1987 (the "Equipment Security Agreement") wherein the Debtor granted to Landmark a security interest in furniture, fixtures, equipment, and machinery of every kind and nature, as more fully set forth in the Equipment Security Agreement. A true and correct copy of the Equipment Security Agreement has been filed by Landmark under separate cover as Exhibit 22 to the Landmark Motion and is incorporated herein by reference.

p. Security Agreement (Inventory-Accounts Receivable) by the Debtor to Landmark dated May 15, 1987 (the "Inventory Security Agreement") wherein the

Debtor granted to Landmark a security interest in the Debtor's inventory and accounts receivable as more fully set forth in the Inventory Security Agreement. A true and correct copy of the Inventory Security Agreement has been filed by Landmark under separate cover as Exhibit 23 to the Landmark Motion and is incorporated herein by reference.

q. Assignment of Interest in Contracts and Leases by the Debtor to Landmark dated May 15, 1987 (the "Contracts/Leases Assignment") wherein the Debtor assigned to Landmark all of the Debtor's right, title and interest in and to all contracts, permits, licenses, easements and leases, as more fully described therein. A true and correct copy of the Contracts/Leases Assignment has been filed by Landmark under separate cover as Exhibit 24 to the Landmark Motion and is incorporated herein by reference.

r. Assignment of Contract Rights by the Debtor to Landmark dated May 15, 1987 (the "Contract Rights Assignment") wherein the Debtor granted to Landmark a security interest in all of the Debtor's rights under a Management Services Agreement between the Debtor and Omni Outdoor Advertising, Inc. as more fully described therein. A true and correct copy of the Contract Rights Assignment has been filed by Landmark under separate cover as Exhibit 25 to the Landmark Motion and is incorporated herein by reference.

10. The Champaign County Mortgage, DeWitt County Mortgage, Ford County Mortgage, Jackson County Deed,

Laurel County Mortgage, Madison County Mortgage, Marion County Mortgage, McLean County Mortgage, Morgan County Mortgage, Delaware County Mortgage, St. Clair County Mortgage, Washington County Mortgage, Will County Mortgage, Collateral Pledge, Equipment Security Agreement, Inventory Security Agreement, Contracts/Lease Assignment and Contract Rights Assignment are hereinafter collectively referred to as the "Collateral Documents." The Notes, the Loan Agreement and the Collateral Documents are hereinafter sometimes collectively referred to as the "Loan Documents."

11. Perfection of Landmark's security interests granted in the Collateral Documents, was effectuated, *inter alia* by the filing of Uniform Commercial Code Financing Statements with the offices and in the indexes as noted thereon (the "Filings"). True and correct copies of the Filings have been filed by Landmark under separate cover as Exhibit 26 to the Landmark Motion and is incorporated herein by reference.

12. Pursuant to the Loan Documents, Debtor promised to pay all costs of collection of Landmark incurred in connection therewith, including, without limitation, reasonable costs, fees, attorneys' fees and expenses.

13. Debtor is in default of its obligations to Landmark under the Loan Documents.

14. As of the date Debtor filed its petition herein (the "Filing Date"), Debtor was indebted to Landmark in the

aggregate amount of $4,139,676.57, plus accruing interest,[1] costs, expenses and fees of collection (the "Indebtedness"). The validity and priority of the Indebtedness and the liens and security interests securing the Indebtedness are not subject to any setoff, recoupment, counterclaim, avoidance or other challenge or attack of any kind or nature. The Indebtedness is hereby allowed as a secured claim.

15. All of Debtor's cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, proceeds, products, rents, or profits derived from Debtor's business or any other property subject to Landmark's security interests, whether existing before or after the Filing Date, constitute "cash collateral" pursuant to 11 U.S.C. §363 and is subject to the duly perfected liens of Landmark (the "Cash Collateral").

16. Substantially all real and all personal property of Debtor, including its fixtures, accounts, Cash Collateral, inventory, machinery, equipment, real estate and personal property of any nature whatsoever (collectively the "Collateral") is encumbered by and subject to the first priority, perfected liens of Landmark pursuant to the duly executed Loan Documents as security for repayment of the Indebtedness.

17. Pursuant to 11 U.S.C. §363, Debtor is prohibited from using, selling or leasing the Collateral for any purpose unless Landmark consents or the Court, after notice and a

---

1. Interest has been calculated at the pre-default rate. This Order shall be without prejudice to Landmark's right to claim interest at the default rates specified in the Loan Documents

hearing, authorizes such use, sale, or lease in accordance with the provisions of 11 U.S.C. §363.

18. Pursuant to 11 U.S.C. §363(c)(4), Debtor is required to segregate and account for all Cash Collateral in its possession, custody or control.

19. 11 U.S.C. §363(e) requires that notwithstanding any other provision of said section, upon Landmark's request, the Court, with or without a hearing, shall prohibit or condition Debtor's use, sale or lease of any Collateral as is necessary to provide adequate protection of Landmark's interests therein.

20. Except upon further Order of this Court or upon default hereunder, Debtor, as debtor-in-possession, may continue to operate its business and to collect the cash, rents, profits and proceeds generated therefrom, limited solely to the ordinary course of business and in accordance with the provisions of this Order and the Bankruptcy Code.

21. All cash, cash equivalents, rents, profits, proceeds and income collected by the Debtor or on the Debtor's behalf shall be deposited and maintained at all times in a debtor-in-possession bank account(s) at Landmark (the "DIP Accounts") in accordance with 11 U.S.C. §345 and shall not be commingled with any other funds derived from any source whatsoever that do not constitute "Cash Collateral" under the terms of this Order.

22. Except as expressly permitted herein, Debtor shall not use any Cash Collateral in its possession, custody or

control at any time, and any cash previously or hereafter received by or on behalf of Debtor immediately shall be delivered to Landmark and used in accordance with the terms of the Post-Petition Loan Agreement (the "Post-Petition Loan Agreement") attached as Exhibit A to the Debtor's Motion and in accordance with the terms of this Order.

23. Debtor is hereby authorized pursuant to 11 U.S.C. §364 to enter into and execute the Post-Petition Loan Agreement, and all documents required thereby or in connection therewith, and borrow funds from Landmark pursuant thereto and pursuant to this Order. In addition to the authorization in the Emergency Order to borrow up to $50,000, the Debtor is hereby authorized to borrow up to the balance of the financing available under the Post-Petition Loan Agreement. The indebtedness incurred under the Post-Petition Loan Agreement shall be secured and collateralized as provided herein. All amounts advanced under the Post-Petition Loan Agreement shall constitute post-petition loans (the "Post-Petition Loans") by Landmark to, and debts of, Debtor bearing interest at the rate provided therein. All obligations described herein, including the Indebtedness and the Post-Petition Loans, are hereby ordered and adjudicated to be binding and enforceable obligations of the Debtor. The Post-Petition Loans shall mature and become immediately due and payable upon the earliest of (i) default hereunder, (ii) default under the Post-Petition Loan Agreement or (iii) the maturity date specified in the Post-Petition Loan Agreement (or any extended maturity date that may be agreed to in writing by Landmark), at which time the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark shall be immediately

due and payable. Landmark's obligation to make advances pursuant to the Post-Petition Loan Agreement shall at all times be entirely discretionary on Landmark's part, and in any event shall terminate upon Debtor's default hereunder or upon maturity of the Post-Petition Loans unless the maturity of the Post-Petition Loans is extended, or the Post-Petition Loans are renewed, as hereinafter provided. Landmark may, in its sole discretion, elect to extend the maturity of the Post-Petition Loans, but Landmark shall have no obligation whatsoever to so extend.

24. Subject to the terms hereof and Debtor's compliance herewith and so long as the Post-Petition Loans have not matured and are not in default, Debtor is hereby authorized to use the Cash Collateral and the proceeds of the Post-Petition Loans for the amounts set forth in the budget attached to the Emergency Order and incorporated therein by reference as Attachment 1 (the "Budget") for use solely for the payment of the expenses to the extent set forth in the Budget. Notwithstanding the foregoing, except for the $100,000 retainer of the Debtor's attorneys ($20,000 of which was deposited with the Debtor's attorneys following entry of the Emergency Order and the remaining $80,000 of which shall be deposited with the Debtor's attorneys following entry of this Order), the expenses designated in the Budget shall be limited to post-Filing Date expenses incurred in the ordinary course of Debtor's business, except as expressly authorized by separate Orders of this Court. Except as specifically authorized herein or by separate Orders of this Court, no transactions with, funds or payments to, or commitments to pay, any insider (except normal, reasonable salaries), affiliate or related entity of, or controlled (directly

or indirectly) by Debtor, shall be made, paid or disbursed by Debtor to any such insider, affiliate or related entity.

25. Debtor shall pay or cause to be paid all ordinary and necessary expenses of operation of its business and the costs required to care for, preserve and maintain the Collateral, which are allowed in the Budget, including, but not limited to, the following:

a. Utility costs and telephone charges;

b. Reasonable salaries to employees of Debtor;

c. Upkeep, maintenance and repairs;

d. Insurance so as to assure continued coverage of the Collateral in accordance with the Loan Documents;

e. Purchase or rental of necessary supplies and equipment;

f. Income, withholding, sales, use, real estate and other taxes, operating permit fees and other charges necessarily incurred in the ordinary course of the Debtor's business.

26. In order to protect Landmark against a decline in the value of its secured position in the Collateral, and to afford such other adequate protection as is required under the Bankruptcy Code:

a. The Debtor shall operate its business pursuant to the terms herein set forth and shall perform all of the obligations hereunder.

b. Landmark is hereby granted, to the extent not heretofore granted, a first, priority and perfected senior lien and security interest in all presently owned and hereafter acquired real and personal property, assets and rights of any kind and nature of Debtor, including all proceeds thereof, wherever located, to secure the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark, including interest, fees and expenses thereon, *provided, however*, that the grant of such liens is subject to a carve out of $10,000 (the "Carve Out") for professionals to be paid from the Debtor's estate. In accordance with 11 U.S.C. §507(b), to the extent the value of Landmark's security interests in the Collateral declines after entry of this Order notwithstanding the adequate protection herein set forth, or such adequate protection otherwise proves to be inadequate, said liens and security interests shall have priority over all administration expenses of any kind as provided in 11 U.S.C. §364(c)(1) except the Carve Out, and, pursuant to 11 U.S.C. §364(c), shall be first and prior liens on the aforesaid property, assets and rights of Debtor subject to the Carve Out. Proceeds from the liquidation of any Collateral shall be applied to the Indebtedness and the Post-Petition Loans in such manner and order as Landmark, in its sole discretion, shall elect.

c. Except as specifically modified herein with respect to payment, or under applicable provisions of

the Bankruptcy Code, Debtor shall comply with all terms and provisions of the Loan Documents. Landmark's waiver of the breach of any covenant set forth in the Loan Documents shall not be deemed a waiver of any subsequent defaults or remedies to which Landmark may be entitled.

d. Landmark is hereby granted the right and is authorized to enter upon, occupy and use any or all of the premises of the Debtor as is reasonable upon prior notice to the Debtor, as Landmark may deem necessary or appropriate, in Landmark's sole discretion, in connection with the exercise of any of Landmark's rights and remedies under the Loan Documents and/or the Post-Petition Loan Agreement, including, without limitation, liquidation of the Collateral.

e. Debtor immediately and continuously shall use its best efforts to market for sale as a going concern the outdoor billboard advertising business of the Debtor, and the proceeds from any such sale immediately shall be paid to Landmark at the closing of such sale for application toward reduction of the Indebtedness.

f. Proceeds from all non-ordinary course of business sales of assets of the Debtor immediately shall be paid to Landmark at the closing(s) of such sales for application toward reduction of the Indebtedness.

g. The automatic stay of 11 U.S.C. §362(a) is hereby modified to the extent necessary to permit Landmark to receive all proceeds from asset sales of the Debtor and

apply the same toward reduction of the Indebtedness. Furthermore, the automatic stay is hereby vacated in all respects as to Landmark for the enforcement of Landmark's rights with respect to the creation, perfection and implementation of Landmark's pre-petition and post-petition liens and security interests in the Collateral.

h. At such time as Landmark is entitled to exercise any remedy with respect to one or more items of Collateral, whether as a result of a default by Debtor or otherwise, the Debtor (or a trustee if one shall have been appointed) shall, subject to approval of the Court, at Landmark's request and upon Landmark's prior agreement to allow reasonable expenses of sales to be paid from proceeds of such sales (A) immediately arrange, and diligently pursue to conclusion, a sale or sales, pursuant to 11 U.S.C. §363 free and clear of all liens, claims, encumbrances and interests, of such Collateral designated by Landmark, with Landmark to retain its right to credit bid all or any portion of the Debtor's obligations to Landmark, or (B) immediately transfer (by deed in lieu of foreclosure or other similar conveyance) to Landmark such Collateral designated by Landmark for a credit bid in an amount to be approved by the Court as fair and reasonable. Nothing herein shall limit or impair the Court's authority to rule on the appropriateness of such sale or conveyance.

27. Subject to the terms hereof, Debtor shall sell or dispose of its inventory, products and supplies and shall operate its business only in the ordinary course of business in compliance with the provisions of the Bankruptcy Code

and upon the terms and conditions usual and customary in such business, and shall deposit the proceeds of such operations only in the DIP Accounts.

28. Landmark's authorized representatives shall be given continuous reasonable access at all times to any and all operating personnel, books, records, information and documents of Debtor relating to the operation of Debtor's business and Debtor's financial dealings.

29. Debtor shall furnish or otherwise cause to be furnished to Landmark all such documents and reports as are required by the Loan Documents and the Post-Petition Loan Agreement at such times and in such a manner as are required by the Loan Documents and the Post-Petition Loan Agreement. In addition, the Debtor shall provide Landmark with copies of all schedules and statements of affairs, operating reports, and other financial information, if any, at any time filed in these proceedings by the Debtor.

30. Debtor is authorized and directed to reimburse Landmark promptly for all present and future costs and expenses incurred by Landmark to effectuate the financing transactions as provided in the Loan Documents, the Post-Petition Loan Agreement and/or this Order, including, but not limited to, audit expenses, field examination expenses, title insurance costs, recording costs and fees of Landmark's counsel, all of which costs and expenses are included in the Post-Petition Loans. Landmark shall file with the Clerk of the Bankruptcy Court, the United States Trustee and the Debtor (or a trustee if one is appointed at the time of Landmark's filing) copies of any present and future costs

and expenses submitted to the Debtor pursuant to this paragraph. Such copies need not be in conformance with fee application guidelines imposed on professionals of the estate, but will be subject only to an overall standard of reasonableness. If no objection to the reasonableness of the costs and expenses is filed within 10 days of Landmark's filing, the costs and expenses will be deemed reasonable. In the event of a dispute, the Court will determine the reasonableness of the costs and expenses. No party-in-interest other than the United States Trustee, the Debtor (or a trustee if one has been appointed at the time of Landmark's filing) shall have standing to file such an objection.

31. Notwithstanding anything herein contained to the contrary, this Order shall be without prejudice to Landmark's rights under 11 U.S.C. §§506 and 507 should the adequate protection provided by Debtor hereunder subsequently be found by this Court to have been inadequate.

32. The Debtor does hereby remise, release, acquit and forever discharge Landmark, and all of its officers, directors, agents, employees, affiliates, subsidiaries, successors and assigns, and anyone claiming through or under them or any of them, of and from all manner of action, causes of action, claims and demands of every kind and nature whatsoever, whether known or unknown, from the beginning of time to the date of these presents, that the Debtor had or may now have against Landmark as may have arisen, or has arisen, in connection with any and all matters, including, but not limited to, all matters that were or could have been set forth in connection with the loan relationship between Hen House Interstate, Inc., and Landmark. This release shall not operate

as or be construed to be a release of Landmark for any acts or conduct occurring after the date of this Order.

33. Except for the Carve Out, no expenses of administration of Debtor's Chapter 11 case or any future proceeding which may develop out of such case, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against Landmark or the Collateral, whether pursuant to §506(c) of the Bankruptcy Code or otherwise, without the prior written consent of Landmark, and no such consent shall ever be implied from any other action, inaction or acquiescence by Landmark.

34. In the event Debtor fails to make any payment due under this Order or under the Post-Petition Loan Agreement, Landmark may provide written notice of said non-payment by telecopy, certified mail or hand-delivery to Debtor's counsel. If said payment is not made within two business days after said notice is so provided, the 11 U.S.C. §362(a) automatic stay shall be deemed terminated automatically without further Order of this Court and Landmark shall have all of the rights and remedies otherwise granted to it in this Order and under the Loan Documents and the Post-Petition Loan Agreement and applicable state law, including, without limitation, the rights of set-off, peaceable repossession, foreclosure and contacting Debtor's account debtors to collect receivables. In the event Debtor fails to comply with the terms hereof, other than any payment terms contained in this Order and in the Post-Petition Loan Agreement, Landmark may so advise counsel for Debtor by telecopy, certified mail or hand-delivery and, if the default is not cured within two business days of said notice, may apply to the

Court for a hearing thereon at the earliest practical time and date. In the proceedings on any such application, Debtor shall have the burden of proving that Debtor is in full compliance with the terms of this Order and the Post-Petition Loan Agreement. A ruling by the Court that Debtor has failed to meet its burden of proof on that issue shall result in an immediate termination of the 11 U.S.C. §362(a) automatic stay with respect to Landmark and the Collateral. No party in interest shall have the right to contest the enforcement of this paragraph based on any assertion that Landmark's interests in the Collateral are adequately protected or on any other ground except the non-existence of an alleged default as set forth above, and no party in interest shall have the right to seek injunctive relief under §105 of the Bankruptcy Code inconsistent with the terms of this paragraph. Until all obligations of the Debtor to Landmark shall have been indefeasibly satisfied in full: (i) No party-in-interest other than Landmark shall foreclose or otherwise seek to enforce any lien, junior lien or other rights such other party may have in and to any property of the estate of Debtor upon which Landmark holds or asserts a lien or security interest unless at the same time Landmark is granted relief from the automatic stay to assert its rights in and to such property; and (ii) upon and after the occurrence of any failure by Debtor to comply with any provision of this Order, Landmark, in its sole discretion, in connection with a liquidation of any Collateral may use any real property, equipment, trademarks, trade names, patents or any other assets of Debtor that are owned by or subject to a lien of any third party and that are used by Debtor in its business, provided that Landmark pays reasonable compensation to such third parties.

35. Landmark shall be entitled to the full protection of 11 U.S.C. §364(e) with respect to the debts, obligations, liens and security interests created or authorized in this Order in the event that this Order or any authorization contained herein is vacated, reversed or modified on appeal or otherwise by any court of competent jurisdiction.

36. There shall not at any time be entered in Debtor's Chapter 11 case or any subsequent Chapter 7 case any further order which authorizes: (i) the use of Cash Collateral by Debtor or the sale, lease or other disposition of property of the estate of the Debtor in which Landmark has an interest; or (ii) under 11 U.S.C. §364, the obtaining of credit or the incurring of indebtedness secured by a lien or security interest that is equal or senior to a lien or security interest held by Landmark, or that is entitled to priority administrative status which is equal or superior to that granted to Landmark herein, unless, in each instance: (a) Landmark shall have given its prior written consent thereto, provided that no such consent shall ever be implied from any other action, inaction or acquiescence by Landmark; and (b) such order of this Court requires that there shall first be indefeasibly paid in full to Landmark all obligations of Debtor to Landmark.

37. The security interests and liens granted to Landmark hereunder or otherwise, the obligations of the Debtor to Landmark and the Collateral shall not be altered, modified, extended, discharged, impaired or affected by any plan of reorganization, except upon the prior written consent of Landmark.

38. The Debtor is hereby prohibited from seeking an injunction pursuant to 11 U.S.C. §105, or otherwise, to limit or delay Landmark from realizing upon the Collateral.

39. In determining to make advances to the Debtor under the Post-Petition Loan Agreement or to collect such indebtedness and obligations, Landmark shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or an "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Internal Revenue Code, as amended, or any other Federal or state statute).

40. The Reconsideration Motion is hereby granted and all objections to the Emergency Order that are inconsistent with the relief requested in the Reconsideration Motion are hereby overruled.

41. If an order is entered at any time that terminates or modifies in any way the provisions of this Order, then Landmark shall have no further obligations to the Debtor whatsoever and the Indebtedness, the Post-Petition Loans and all other obligations of the Debtor to Landmark immediately shall be due and payable.

42. The rights and liens granted and adjudications made herein as to Landmark, and the obligations and duties of the Debtor herein, shall be binding and valid against the Debtor, all creditors and parties-in-interest in this proceeding and any successor(s) of Debtor, including any Chapter 7 trustee

appointed in the present or any subsequent proceedings under the Bankruptcy Code, and shall survive the termination, modification or expiration of this Order, or any termination of the present proceedings, whether by confirmation of a plan, dismissal, conversion or otherwise. Landmark shall not be required to take any further actions or make any filings to perfect said rights and liens. If, however, Landmark shall, in its sole discretion, elect for any reason to file any financing statements, mortgages, deeds of trust or other documents with respect to such security interests and liens, the Debtor promptly shall execute same upon Landmark's request and all such financing statements, mortgages, deeds of trust and other documents shall be deemed to have been filed or recorded at the time and on the date of commencement of this Chapter 11 case. Landmark may, in its sole discretion, file a certified copy of this Order in any filing or recording office in any county or other jurisdiction in which the Debtor has real or personal property and, in such event, the subject filing or recording officer is authorized and directed to file or record such certified copy of this Order.

43. This Order may be extended from time to tine without further hearing, upon written agreement of Debtor and Landmark and upon notice to the Court and to those parties as the Court may designate from time to time.

DATED: October 25, 1991

s/ David P. McDonald
UNITED STATES BANKRUPTCY
JUDGE

Final Order to Obtain Post-Petition Secured Credit

APPROVED AS TO FORM AND SUBSTANCE:

HEN HOUSE INTERSTATE, INC.
Debtor and
Debtor-in-Possession

By s/ David A. Warfield
David A. Warfield
Husch & Eppenberger
100 North Broadway
St. Louis, Missouri 63102
(314) 421-4800

Its Attorneys

LANDMARK BANK OF ILLINOIS

By s/ Carl J. Spector
Carl J. Spector
Karen W. Fries
Bryan, Cave, McPheeters & McRoberts
500 N. Broadway,
Suite 2000
St. Louis, Missouri 63102
(314) 231-8600

Its Attorneys

APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE, PURSUANT TO 11 U.S.C. § 503 AND CHARGE AGAINST COLLATERAL, PURSUANT TO 11 U.S.C. § 506(c) DATED AUGUST 2, 1993

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Case No. 91-45623-293
Chapter 7 Proceeding

IN RE:

HEN HOUSE INTERSTATE, INC.,

Debtor.

APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE PURSUANT TO 11 U.S.C. SECTION 503 AND CHARGE AGAINST COLLATERAL PURSUANT TO 11 U.S.C. SECTION 506(C)

Hearing Date: August 26, 1993
Hearing Time: 10 a.m.

COMES NOW Hartford Underwriters Insurance Company ("Hartford") by and through its attorneys, Vincent D. Vogler & Associates, and for its Application for Allowance of Administrative Expense Claim and Charge against Collateral, respectfully states to the Court as follows:

1. On September 5, 1991, Hen House Interstate, Inc. ("Debtor"), filed a voluntary Petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Code").

2. At the commencement of the case, the debtor obtained workman's compensation coverage issued by Hartford.

3. The final Order authorizing Debtor to obtain post-petition secured creditor, granting senior liens and administrative priority expense, modifying automatic stay, providing adequate protection and authorizing agreements with Landmark Bank of Illinois entered on or about October 22, 1991, clearly contemplated the continuation of the Debtor's business and the need for the Debtor to maintain workman's compensation coverage.

4. During the course of the administration of this Estate, Hartford continued to provide workman's compensation insurance, for which the Debtor-in-Possession agreed to pay all accrued premiums.

5. At the conclusion of the policy period, Hartford conducted a final audit of the Debtor's insurance policy, and pursuant to said audit, the sum of $53,339.00 remains due and owing to Hartford.

6. No part of said $53,339.00 has been paid by Debtor, and the sum remains due and owing.

7. Hartford further argues that said administrative expense is recoverable from property securing the claim of Magna Bank pursuant to 11 U.S.C. Section 506(c) on the

basis that a continuation of worker's compensation coverage was required in order to keep the Debtor's restaurants open and operating, which allowed them to be sold as going concerns and enabled Magna Bank to maximize the value of their collateral.

WHEREFORE, the undersigned prays that it be allowed an administrative expense claim in the sum of $53,339.00; that said administrative expense claim is recoverable from property securing the claim of Magna Bank pursuant to 11 U.S.C. Section 506(c); and for such other and further relief as the Court deems just and proper.

VINCENT D. VOGLER AND
ASSOCIATES

By:_____

WENDI S. ALPER
(M.B.E. #32906)
Attorney for Hartford Underwriters
Insurance Company
11330 Olive Blvd., Suite 200
P.O. Box 419037
St. Louis, MO 63141-9037
(314) 567-7970

Application for Allowance of Administrative Expense

ITT HARTFORD

Hen House Interstate Inc
P.O. Box 1014
Saint Charles, MO 63302-1014

ITT Hartford
P.O. Box 2024
Hartford, CT 06145

Statement of Premiums

Date: *7/21/93*

Account #: *MOIL1080000MKZ*

Agent/Broker *Cervantes & Assoc.*

Total Amt Due *$53,339.00*

Policy	Policy Period	Transaction	Effective Date	Premium
83 AN8711	09/01/91-09/01/92	New Business	09/01/91	$25,820.00
		Transfer	10/02/91	(34,297.00)
		A/P Endorse	11/11/91	6,139.00
		Interim Audit	09/01/91	32,418.00
		Interim Audit	09/01/91	17,760.00
		Interim Audit	01/01/91	11,882.00
		Interim Audit	02/01/91	11,882.00
		Interim Audit	01/01/92	1,373.00
		Interim Audit	02/01/92	10,682.00
		Interim Audit	03/01/92	12,178.00
		Interim Audit	03/01/92	0.00
		Payment	06/22/92	(47,997.00)
		Transfer	06/24/92	157.00
		Total Due on Policy Term:		Continued

Application for Allowance of Administrative Expense

ITT HARTFORD

Hen House Interstate Inc
P.O. Box 1014
Saint Charles, MO 63302-1014

ITT Hartford
P.O. Box 2024
Hartford, CT 06145

Statement of Premiums

Date: *7/21/93*

Account #: *MOIL1080000MKZ*

Agent/Broker *Cervantes & Assoc.*

Total Amt Due *$53,339.00*

Policy	Policy Period	Transaction	Effective Date	Premium
83 AN8711	09/01/91-09/01/92	Interim Audit	05/01/92	$13,344.00
		Interim Audit	05/01/92	12,194.00
		Transfer	06/24/92	(157.00)
		Interim Audit	07/01/92	12,194.00
		Interim Audit	07/01/92	(12,194.00)
		Interim Audit	07/01/92	11,005.00
		Final Audit	09/01/91	(31,044.00)
		Total Due on Policy Term:		$53,339.00

OBJECTION OF MAGNA BANK OF ILLINOIS TO HARTFORD UNDERWRITERS INSURANCE COMPANY APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE PURSUANT TO 11 U.S.C. § 503 AND CHARGE AGAINST COLLATERAL PURSUANT TO 11 U.S.C. § 506(c) DATED AND FILED AUGUST 20, 1993

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Proceedings Under Chapter 7

Case No. 91-45623-293

In Re:

HEN HOUSE INTERSTATE, INC.,

Debtor.

OBJECTION OF MAGNA BANK OF ILLINOIS TO HARTFORD UNDERWRITERS INSURANCE COMPANY APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE PURSUANT TO 11 U.S.C. SECTION 503 AND CHARGE AGAINST COLLATERAL PURSUANT TO 11 U.S.C. SECTION 506(c)

Hearing Date: August 26, 1993
Hearing Time: 10:00 a.m.

Objection to Application for Administrative Expense

Comes now Magna Bank of Illinois (successor-in-interest to Landmark Bank of Illinois) ("Magna"), and for its objection to the Application for Allowance of Administrative Expense Pursuant to 11 U.S.C. Section 503 and Charge Against Collateral Pursuant to 11 U.S.C. Section 506(c) (the "Application") filed by Hartford Underwriters Insurance Company ("Hartford") states as follows:

1. Paragraph 33 of the *Final Order Authorizing Debtor to Obtain Post-Petition Secured Credit, Granting Senior Liens and Administrative Priority Expense, Modifying Automatic Stay, Providing Adequate Protection and Authorizing Agreements with Landmark Bank of Illinois* (the "Final Order") entered by the Court in this case on or about October 25, 1991, states as follows:

> "Except for the Carve Out, no expenses of administration of Debtor's Chapter 11 case or any future proceeding which may develop out of such case, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against Landmark or the Collateral, whether pursuant to §506(c) of the Bankruptcy Code or otherwise, without the prior written consent of Landmark, and no such consent shall ever be implied from any other action, inaction or acquiescence by Landmark."

At no time did Magna (or Landmark) execute a "prior written consent" to allow the alleged administrative expense of Hartford to be charged against Magna or its collateral. Accordingly, paragraph 33 of the Final Order expressly

prohibits the relief requested by Hartford with respect to section 506(c).

2. Even in the absence of paragraph 33 of the Final Order, Hartford has failed to establish that it is entitled to the relief it is requesting under Section 506(c). See *Brookfield Production Credit Association v. Borron*, 738 F.2d 951 (8th Cir. 1984).

3. Hartford lacks standing to seek the relief under Section 506(c) requested in the Hartford Application. See *In re Codesco, Inc.*, 18 B.R. 225 (Bankr. S.D.N.Y. 1982).

WHEREFORE, Magna respectfully requests that the Court deny the Application and for such other and further relief as is just and proper.

BRYAN CAVE

By: s/ Carl J. Spector
Carl J. Spector, Esq.
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102-2750
(314) 259-2000

Attorneys for Magna Bank of Illinois

TRIAL STIPULATION OF FACTS DATED AND FILED APRIL 5, 1994

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Proceedings Under Chapter 7

Case No. 91-45623-293

In Re:

HEN HOUSE INTERSTATE INC.,

Debtor.

HARTFORD UNDERWRITERS
INSURANCE COMPANY,

Movant,

vs.

MAGNA BANK OF ILLINOIS,

Respondent.

Motion No. 463

Hearing Date: April 5, 1994
Hearing Time: 9:30 a.m.

TRIAL STIPULATION OF FACTS

Hartford Underwriters Insurance Company ("Hartford") and Magna Bank of Illinois ("Magna")[1] stipulate to the following facts for purposes of the trial on this matter:

1. Hen House Interstate, Inc. (the "Debtor"), filed Chapter 11 proceedings on September 5, 1991.

2. Hartford provided worker's compensation insurance coverage (the "Insurance") for the Debtor for the period from September 1, 1991, through September 1, 1992. The Debtor was required to carry Insurance during that period.

3. The Debtor previously paid premiums totalling $82,294.00 to Hartford on account of the Insurance.

4. Hartford claims that it still is owed $51,871.40 for Insurance premiums for the post-petition period during which the Insurance was in force. Magna has no evidence to the contrary with respect to the amount claimed to be outstanding.

5. As of the present time, Hartford has paid losses on worker's compensation claims made under the Insurance totalling $32,551.00. In addition, Hartford presently has reserved, but has not paid, $38,549.00 on account of potential losses. As of August of 1993, the amount held in reserve on

---

1. For convenience, reference is made to "Magna" throughout this Stipulation, notwithstanding that certain facts pertain to Landmark Bank of Illinois prior to its acquisition by Magna.

account of potential losses was $20,821.00. The total amount of losses actually paid by Hartford under the Insurance increased by $179.00 from August of 1993 to the present. No new claims have been made on the Insurance since September of 1992.

6. In making the post-petition debtor-in-possession loan to the Debtor, Magna anticipated that it, as well as the Debtor's other creditors, would receive a greater return through a Chapter 11 filing in which the Debtor's operations would continue in the hope of a reorganization, rather than from an immediate liquidation of the Debtor's property outside of Chapter 11.

7. When the Debtor filed Chapter 11 on September 5, 1991, the Debtor anticipated that it would continue its operations and reorganize its business. Sometime in 1992, the reorganization prospects did not materialize and the Debtor liquidated its assets through a combination of going concern sales and sales of shut-down properties.

8. As of the September 5, 1991, petition date, the Debtor owed Magna approximately $4 million.

9. Magna has not recovered the full amount owed to it by the Debtor. Magna has lost approximately $1,500,000.00 in principal, plus additional amounts for unpaid interest and attorneys' fees and expenses.

10. Magna previously disbursed to the Debtor the full $300,000.00 available under the post-petition debtor-in-possession loan made by Magna to the Debtor.

Trial Stipulation of Facts

11. Hartford was not aware of the Debtor's bankruptcy proceedings until March of 1993.

Dated: April 5, 1994

VINCENT D. VOGLER & ASSOCIATES	BRYAN CAVE
By: s/ Wendi S. Alper Wendi S. Alper, Esq. 11330 Olive Boulevard, Suite 200 P.O. Box 419037 St. Louis, MO 63141-9037 (314) 567-7970	By: s/ Carl J. Spector Carl J. Spector, Esq. One Metropolitan Square Suite 3600 211 North Broadway St. Louis, MO 63102 (314) 259-2000
Attorneys for Hartford Underwriters Insurance Company	Attorneys for Magna Bank of Illinois

TRANSCRIPT OF HEARING OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION BEFORE THE HONORABLE DAVID P. MC DONALD DATED APRIL 5, 1994

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Case No. 91-45623-293
Chapter 7
St. Louis, Missouri
April 5, 1994
10:40 O'clock A.M.

In The Matter of:

HEN HOUSE INTERSTATE, INC.,

Debtor.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE DAVID P. McDONALD

* * *

[2] PROCEEDINGS

THE COURT: Hen House Interstate. Hartford Underwriters. Ms. Alper, do you represent Hartford?

MS. ALPER: Yes, Your Honor.

THE COURT: Okay.

MS. ALPER: I believe — I'm ready. Carl? I believe Mr. Spector has a stipulation of facts for the trial, which has been executed by us both.

THE COURT: All right.

MR. SPECTOR: Your Honor, what I have and would like to tender to the Court is the trial stipulation of facts, which we have filed with the Clerk's office and is file-stamped, as well as four exhibits that have been marked Joint Trial Exhibits 1, 2, 3 and 4. Just for the record, let me identify what these Joint Trial Exhibits are. Joint Trial Exhibit 1 is a certified copy of the emergency motion for order authorizing debtor to obtain post-petition financing pursuant to 11 U.S.C. §364, to utilize cash collateral pursuant to 11 U.S.C. §363, and granting adequate protection to pre-petition secured party, that was filed in this case. Joint Trial Exhibit 2 is the emergency order entered by this Court on September 6th, 1991 authorizing the financing on an emergency basis. This is also a certified copy. Joint Trial Exhibit 3 is the final order entered by the Court on October 25th, 1991 authorizing the financing. This is also a [3] certified copy. And then Joint Trial Exhibit 4 is the deposition of —

MS. ALPER: Mary Zuk.

MR. SPECTOR: — Hartford Underwriters Insurance Company, which designated as its representative, Mary Zuk, Z-u-k, to testify on its behalf. This exhibit not only includes the transcript of her deposition, but also the exhibits that

were introduced at her deposition. If I may, I'd like to tender these to the Court at this time.

THE COURT: Thank you.

MR. SPECTOR: Also, Judge, in addition to the exhibits that are — well, let me formally move on behalf of both parties that Exhibits 1 through 4 be admitted into evidence.

THE COURT: They'll be received as marked along with the Trial Stipulation of Facts.

MR. SPECTOR: All right, Judge. Thank you. Also there are specific portions of the deposition transcript that I would like to read into the record and draw the Court's attention to. Beyond that, there is no presentation of evidence, unless Ms. Alper has anything else. And then we're both prepared to present our arguments.

THE COURT: Go right ahead.

MR. SPECTOR: Judge, I realize we've sort of blown right into the evidence and portions of testimony. Would it [4] be of any help to refresh the Court's recollection of what the issues are here? Or are you fully familiar with them?

THE COURT: I read through my own decision that I had written earlier and I reviewed the few things that were in the file. But feel free, if you feel you need to bring me up to date, go ahead.

MR. SPECTOR: Okay. Judge, as you obviously recall, then, from your prior decision, there is approximately actually a little over $51,000 now that's been in dispute. Hartford has revised that figure somewhat lower to account for a pre-petition period that should not be included in the post-petition claim. And that is reflected in the Trial Stipulation of Facts. The claim is for Workers' Compensation premiums, which Hartford says remains unpaid. We have no evidence to the contrary and didn't see any reason to require Ms. Alper to bring in testimony in order to prove that up. We would have no evidence to the contrary. As you know, the 8th Circuit has held that administrative claimants can have standing if the equities of the case dictate that they should have standing under §506(c). Our position is that they should not. We articulated that to the Court before based on the statutory language of 506(c). We recognize we can't argue before you today to change that law as to whether or not administrative claimants may have standing if the equities of the case so dictate. And we're not going to [5] attempt to reargue that here. There are, however, other arguments that I will speak to in greater detail, but just — after I've presented the deposition testimony. But just so that you understand where we're headed, there really are essentially the following arguments, notwithstanding the Boatmen's decision that the 8th Circuit made. Number one, is that §364(e) of the Bankruptcy Code protects the final order that was entered by the Court from being modified in any fashion or being ignored or tinkered with in any manner. And as Your Honor may recall, there is a provision in that final order expressly prohibiting the charge of 506 claims against Magna's collateral, absent it's prior written consent.

THE COURT: Well, did the same thing exist in the 8th Circuit case?

MR. SPECTOR: No, it did not —

THE COURT: Okay.

MR. SPECTOR: — Judge, and I think that is a significant point and one which I intend to address specifically in the argument section. We also believe that the equities of the case are such that Hartford should not be allowed to charge its premiums under 506(c) to Magna's collateral. And as you will see, it is primarily because Hartford has collected in premiums substantially more than it has paid in any losses on the policy. Magna itself has lost in excess of a million five. And Hartford has not handled [6] this policy in accordance with its own guidelines and internal regulations and, in effect, sat on its rights. And also, Judge, frankly, because Hartford maintains that it was not aware of the bankruptcy proceedings, it really could not in any way have relied on rights under 506(c) in extending the unsecured credit to the debtor. I will also argue in greater detail in the argument section that the standard that the 8th Circuit has had for approximately ten years before the Boatmen's case was decided, on whether or not you can recover under §506(c) remains alive. There's a very narrow exception that had been applied under the 8th Circuit's case in the Brookfield (phonetic) Production Credit Association vs. Boron (phonetic) case that has been the law for ten years. The case wasn't even mentioned in the Boatmen's case and I believe for certain reasons, as I'll enunciate, that that standard still remains alive. And as a result should not, in

application of that standard Hartford will not be able to recover. So those are the arguments that I will be making. And with that background, I would like to read into the record certain portions of the transcript of the deposition of Mary Zuk, which was the designated representative of Hartford Underwriters.

THE COURT: Okay.

MR. SPECTOR: Judge, do you have that deposition?

THE COURT: I have it before me.

[7] MR. SPECTOR: All right. Your Honor, beginning on page 36, line 3 of the deposition the question was as follows:

"Q Now, when we look back on page 3" — which, by the way, refer to the interrogatory answers that are Exhibit 1 to the deposition — "Now, when we look back on page 3 and refer back to the due dates of October 15th of 1991, November 15th of 1991, December 15th of 1991 and January 16th of 1992, can you tell me whether the policy could have been cancelled for nonpayment on any of those dates?

"A I would say yes, it could.

"Q But that was not done by Hartford, was it?

"A No.

"Q Do you or do you not know why?

"A No, I don't know why. I was going to say not to my knowledge, but the answer is I don't know.

"Q In your experience at Hartford is it generally the policy to send a cancellation notice for nonpayment and cancel a policy if the payment is not timely received?

"A That is the policy as I know it, yes.

"Q And to your knowledge, is that the policy that is supposed to be followed by individuals at Hartford?

"A I mean, that would be — my general answer would be yes, but I don't know what specific circumstances there might be.

"Q And in this particular case, from the information that [8] you have, is it your testimony that the policy was not followed?

"A It appears that it was not followed."

Your Honor, I would also like to read into the record the testimony on page 40 of Ms. Zuk's deposition beginning on line 2.

"Q And based on your answer to Interrogatory No. 6, is it correct that you did not receive a payment at all from Hen House until June 22nd of 1992?

"A Yes.

Transcript of Hearing

"Q And the policy had been in force since September 1 of 1991, is that correct?

"A Yes.

"Q And at the same time there were monthly payments that you were suppose to receive from Hen House, correct?

"A Correct.

"Q And under the Hartford guidelines that you were supposed to follow, each nonpayment on each month from September 1, 1991 through June 15 of 1992 would have been grounds for cancellation, correct?

"A Yes.

"A Yes.

"Q And yet Hartford never cancelled the policy during any of that period of time, correct?

"A Correct.

"Q And you don't know why it wasn't cancelled?

[9] "A No.

"Q If it had been cancelled for nonpayment, would Hartford's losses be less than what you're claiming in this case?

"A certainly from a premium standpoint, yes.

Transcript of Hearing

"Q You would be claiming less than fifty-three thousand-plus dollars, correct?

"A Depending on what point at which it was cancelled, yes.

"Q The earlier it was cancelled the less money you would be claiming, correct?

"A Correct.

"Q So that if Hartford had followed its policies of cancelling for nonpayment as early as October of 1991, your claim here would be significantly less, wouldn't it?

"A Yes."

Next, Your Honor, page 57 beginning on line 11 of Ms. Zuk's deposition.

"Q The assigned risk pool is known as the market of last resort for this type of insurance, isn't that correct?

"A Right.

"Q And Hartford would have been aware when it received this policy that it was a company that could not get the insurance elsewhere, correct?

"A Correct.

"Q Do you also agree that that indicates to Hartford that the insured is a greater credit risk than those who can [10] obtain insurance through the voluntary market?

"A That would be the natural assumption. Whether that's actually true or not, I don't know. Yes, I would assume that.

"Q That's why somebody is in the market of last resort, right?

"A Yes. The same reason for the assigned risk billing.

"Q So Hartford was on notice as of September of 1991, when it first took in the policy, that the insured was a higher credit risk than those who do not obtain the insurance through the market of last resort, correct?

"A Correct.

"Q And yet it kept the insurance in force for more than nine months without having any payments to be applied to the outstanding balance, is that correct?

"A Yes, that appears to be correct.

"Q Does that sound like normal procedure to you?

"A I hope not. I don't know."

A very short passage, Judge, on page 72 beginning on line 14.

"Q In searching your files, have you seen any invoices sent to Hen House prior to May 27th of 1992?

"A No."

And Your Honor will recall this policy actually went into effect in September of 1991. Two more passages, Judge, and then I will be completed. Page 87 beginning on line 19. I [11] had identified or marked for identification. Exhibit 11, which was out of the manual from the assigned risk pool entity known as NCCI.

"Q Let me show you Exhibit 11 and ask you to tell me what that is, please.

"A These are the collection procedures from the NCCI manual.

"Q Do those procedures apply to Hartford?

"A Yes.

"Q Do those procedures apply to this Hen House insurance that's at issue here?

"A Yes, it should.

"Q Should these procedures also apply to the assigned risk department at Hartford?

"A Yes.

"Q I'd like you to read the first complete sentence at the top of the second page. If you would read it aloud, please.

"A 'If undisputed premium remains unpaid cancellation procedures should be initiated consistent with the cancellation performance standards found in §A-4.'

"Q And these are guidelines required by NCCI, correct?

"A Right.

"Q Was that guideline followed in this case?

"A You mean before it got to collections?

"Q At any time.

"A No, they were not followed all the time.

[12] "Q Do you know why they were not followed?

"A No."

And then finally, Judge, on page 90 beginning on line 22.

"Q Ultimately, if you don't recover the $53,000, who is going to sustain the loss? Is it Hartford or NCCI?

"A It would be at this time and in this instance it would be NCCI."

And that's the end of the particular portions that I intended to read into the record, Judge.

THE COURT: All right. Thank you. Ms. Alper, was there any portion of this that you wished to read into the record?

MS. ALPER: Just a few, Judge. Beginning on page 94, line 23.

"Q With respect to the assigned risk pool as being the insurer of last resort, is a credit risk the only reason a company would be in the pool.

"A No. Many times it's also their claims history.

"Q Thus Hen House being in the pool would not necessarily mean that they were a credit risk?

"A Right. Right. And I think they had an experience mod that was like 1.88 that shows they had a high experience mod that shows they did they did have a bad claims history."

And turning to page 42, line 2.

"Q Now, in your response to the Interrogatory No. 6 also [13] state that on June 29th, 1992 the account appeared on a nonpayment cancellation list, is that correct?

"A Yes.

"Q And that is seven days after receiving the forty-seven thousand nine-ninety-seven, correct?

"A Right.

"Q I take it then that Hartford had already known about the payment of the forty-seven thousand-plus dollars when the account appeared on the nonpayment cancellation list, correct?

"A Yes. Yes.

"Q Why was the policy not cancelled after it appeared on the June 29th, 1992 nonpayment cancellation list?

"A Well, in my file there's a memo that says, 'Too late to process. Cancellation expires 9/1/92.' "

And beginning on page 72, line 10.

"Q To your knowledge, were there invoices of this type sent prior to May 27th, 1992 to Hen House?

"A Not to my knowledge, no.

"Q In searching your files, have you seen any invoices sent to Hen House prior to May 27th, 1992?

"A No.

"Q Why would there not have been invoices sent on a policy that commenced in September of 1991 until May 27th, 1992?

"A I think that was because Hen House did not send in those [14] monthly interim audits for all those months.

"Q So long as someone doesn't send an interim audit, they don't have to pay?

"A Well, we wouldn't know how much to charge until" — excuse me — "would not know how much to charge them until finally the auditor went in and did a physical audit. I believe that was in February.

"Q Why didn't the auditor do a physical audit sooner when the reports weren't received?

"A I'm sure that would be a matter of scheduling or I don't know what the work load is. I don't know the answer to that."

That's all, Judge.

THE COURT: All right, thank you. Any rebuttal reading of the deposition?

MR. SPECTOR: No, Your Honor.

THE COURT: All right. I assume now you both simply wish to give an argument?

MS. ALPER: Yes.

THE COURT: Mr. Spector?

MR. SPECTOR: Yes, Judge. I was going to say I suspect it makes more sense for me to articulate my arguments, but I'll defer to Ms. Alper.

MS. ALPER: No, that's fine. You go first.

MR. SPECTOR: Judge, what I will leave with the [15] Court so that you don't have to try and memorize everything that I'm trying to articulate here is number one, a summary of the arguments that I am presenting today. It is not a very long document. But I thought in summary outline fashion it would be more helpful than a long memorandum. What I

also did in addition to that is prepare a separate memorandum of law addressing the 364 issue in particular because I think that is something that requires consideration of case law and warranted a short legal memorandum on the issue. As I stated earlier, we are not asking this Court to decide this case on the grounds that Hartford cannot have standing under §506(c). We concede that that's the 8th Circuit law as it stands and can't be changed by this Court. Our first argument, Judge, is that §364(e) of the Bankruptcy Code in the financing section prohibits this Court from modifying or ignoring or otherwise changing the terms of the financing order that was entered by this Court upon proper notice in compliance with the Bankruptcy Code, in compliance with the Bankruptcy Rules and on which Magna relied in extending $300,000 in new post-petition credit, as well as allowing the authorization to use cash collateral during the case. Paragraph 33 of this Court's final order, which was entered on October 25th of 1991, contained a specific provision that provided that, except for a carve-out, which was $10,000 for professional fees, no expenses of administration of the debtor's Chapter [16] 11 case or any future proceeding shall be charged against Magna or the collateral, whether pursuant to 506(c) or otherwise, absent the prior written consent of Magna. And I should note for the record that when I refer to Magna, that includes any references to Landmark, since Landmark was actually the predecessor in interest to Magna's present day position. So we have a paragraph in the final order which expressly prohibits the type of relief that Hartford is requesting here. As the Court knows, there's a very strong policy of encouraging post-petition financing. That's the reason for §364(e) is because a lender has to know that the promises that are made

and the orders entered won't be tinkered with at some point later on in the case. I think that the 7th Circuit in the Common Nates (phonetic) decision, which is cited in our memorandum, articulated it very well. And the Court said the following,

> "The lender that extends credit in reliance on a financing order is entitled to the benefit of that order, even if it turns out to be legally or factually erroneous. If a creditor fears the rug will be pulled out from under them, they will hesitate to lend. And 364(e) prohibits courts from backtracking on promises in the absence of bad faith."

I should note bad faith is not an issue here. There was a [17] finding of bad — a finding of good faith by all the parties to the financing order. And that's not something that's been raised by Hartford and is not an issue in the case. The question then comes up, what, if any, is the impact of the recent 8th Circuit case, the Boatmen's — IRS vs. Boatmen's case construing 506(c)? And I don't believe that that case (A) even addresses 364(e) or would compel this Court to not follow the requirements of 364(e) for some critical reasons. Number one, in the 8th Circuit's Boatmen's case the lender in that case expressly subordinated its liens to all administrative claims. Here we have just the opposite. We have a super-priority lien. If you look at the order, it is replete to make sure we took great pains to insure that we had the first priority lien and that there would be no 506(c) charges, unless there was express consent in writing to a 506(c) charge. So I think that the facts of the Boatmen's case are so different because of the express consent to a subordination of its lien, as opposed to here where there was an express

prohibition that 364(e) and the strong policy that it has behind it remains alive and certainly applies to this case. And the relief that Hartford is asking for is that, in effect, you modify that order or you look past that order. The one reason that they've articulated in they said, "Well, we didn't have notice of the bankruptcy proceedings." Well, number one, under 364, even if there is a modification or [18] tinkering with the order, the strong policy behind 364(e) is even if it's modified as the Common Nate Court said, even if factually or legally erroneous, that doesn't change the viability of the order itself. It still remains intact. The second point is that if they didn't know about the bankruptcy proceedings, they certainly couldn't have relied on any rights that they thought they may have had under 506(c). In effect, after the fact they say, "Oh, we hadn't billed this thing till May 27th. We didn't cancel when we had the right. We're still owed money. Ah, but I see there's this section called 506(c). I'm going to see if I can get paid under that section." I don't think there's any prejudice, in any event, to the application of 364(e) because if they had no notice of the proceedings they certainly couldn't have relied in any sense on rights they thought they might have had under 506(c). Secondly, Judge, we believe the equities in this particular case, even consistent with the Boatmen's decision by the 8th Circuit suggests that this creditor should not be awarded any charges under §506(c). You will see in the stipulation of facts that Hartford to-date has paid approximately $32,000 actual out of pocket $32,000 to claimants. At the same time it has collected from Hen House in excess of $82,000 in premium payments that were, in fact, paid. So as we stand here today, Hartford's already collected approximately $50,000 more in premiums than it's [19] had to pay in losses. And as you know, insurers also

like to create reserves for claims that are still open. There is approximately another $38,000, that is reflected again in the Trial Stipulation of Facts, that Hartford has reserved, but not paid for claims. Even if you total what they have actually paid and assume everything that they have presently reserved to-date gets paid, they will still have received $11,000 more in premium payments that have, in fact, been paid than what they've had to pay out on claims. Now, Ms. Alper will tell you that the policy period is still open and there are potentially increased claims. You will see, however, that the stipulation states that there have been no new claims asserted in a year and a half. The last claim asserted was September of 1992, which was when the policy concluded. And number two, that the only thing that has changed, for example, from August of 1993 to the present is that Hartford paid out an additional $179 in claims and increased its reserve by some amount during that period. But effectively the amounts actually paid haven't changed over a long period of time and they have increased their reserves to some extent. But even with the increase in reserves, if all of those, which is the adjustor's best guess at this juncture, if all of those are paid, coupled with what they have paid, they would still have received $11,000 more in premium payments. At the same time Magna in this case, which [20] came forward with the financing and provided it, provided the use of the case collateral, has lost in excess of a million five in the case. Also, Judge, as you have, I think, amply seen from the testimony of the deposition that was read into the record, Hartford was extremely delinquent, by its own admission, in pursuing collections. It failed to follow its own internal policies. It failed to follow guidelines that the NCCI had established and which bound Hartford. And so, in effect,

this is someone who has sat on their rights from a policy in 1991 and is here in 1994 seeking to charge us with these unpaid premiums. They admit by — again, by their own testimony, that had they acted timely and had they taken the appropriate steps, their claim would have been diminished significantly, by following their own procedures, which they chose not to do. The fact that Hartford claims that it did not have notice of the bankruptcy proceedings, again, actually weighs in Magna's favor on the equities issue. Because if it's someone who didn't know about the proceedings and didn't in any way rely on assumed rights under 506(c), it hardly seems inequitable to say that given all these other factors and the fact that this isn't something that you were consciously aiming for and trying to accomplish, that under the equities we should not allow the claim to be charged under 506(c). Now, the last argument that I would like to assert is that the 8th Circuit's decision ten years ago in [21] the Brookfield Production Credit Association vs. Boron case, which announced a very narrow standard for charging 506(c) claims against secured creditors, remains alive, notwithstanding the existence of this new 8th Circuit Boatmen's case. The Boatmen's case does not even mention this longstanding ten year old case that has been the policy in this district for ten years. Does not even mention this Boron case whatsoever. What can you gather from that? I think that the most logical conclusion that you can gather from that is that the Court didn't intend to overrule the Boron case because if they did, all you'd have to do is type in 506(c) into the computer, up pops the Boron case. It's an 8th Circuit case. I would find it hard to believe that the Court wouldn't have mentioned the decision and said, "We overrule Boron and now adopt this now standard." So I think that the standard

still applies. So the question then is, under what circumstances do you apply the test in Boatmen's and under what circumstances do you apply the test in Boron? Here are the factors that I think in the Boatmen's case were present that were so significant to the broad standard that was applied in the Boatmen's case. And when I speak about the broad standard, I will say that I believe, as that case is written, there virtually is no administrative expense that wouldn't be charged under 506(c). I really think — and I will state for the record, I think that standard is wrong [22] under any set of circumstances, frankly, because what happened is that now the exception has swallowed the 506(a) rule of not charging secured creditors except in unique circumstances. But I'm not asking you to change the 8th Circuit standard in its entirety. In the Boatmen's case these were the unique circumstances that I think led the Court to adopt this broad, sweeping standard that it did. Number one, as I mentioned before, the lender in Boatmen's expressly subordinated its security interest to legitimate administrative claims. That's factor number one. That was not the case here, obviously, as we've discussed. Secondly, the initial purpose at the inception of the case in the Boatmen's decision was to lend the funds only to conduct an immediate liquidation of the debtor's assets solely for the benefit of the secured creditor. That's why the case was filed. That's why the funds were lent. And frankly, that's why I assume the lender in that case expressly subordinated its liens to administrative claimants. Here, however, the purpose of the loan, as reflected in the stipulation and as reflected in the debtor's motion and as reflected in the findings of the Court in the financing orders, was to give the debtor an opportunity to reorganize and to pay all creditors a better return. Certainly one doesn't lend

funds or go into a bankruptcy in the hopes of getting a worse return. But the purpose was really to allow the debtor the [23] opportunity to reorganize for the benefit of all creditors. It wasn't, as the Court will recall and the documents reflect, a filing to begin an immediate liquidation limited solely to the assets of the bank in order to maximize the value. Ultimately, after there were several efforts, as the Court knows, by the debtor to reorganize, there was a liquidation. And that did ultimately occur in the case. But that wasn't the purpose of the loan when it was made and that's a significant distinction from what occurred in the 8th Circuit's decision where that was the purpose at the inception of the financing. Thirdly, I think it is significant that in the Boatmen's case the 506(c) claimant was an involuntary administrative claimant. It was the IRS. And the decision it relied on, the Annette Ford (phonetic) decision, was an admin — an involuntary administrative claimant, someone who has no choice of whether to participate in the proceedings or not. Here you have an administrative claimant who can choose to do business in the State of Missouri or not to do business in the State of Missouri. I think Ms. Alper will tell you that Hartford doesn't know when it is assigned Workers' Compensation policies until after the fact because it goes to the — this NCCI entity in the first place. But again, it's somebody who can choose or not choose to do business in a state that is subject to those requirements. The government, the IRS, has no choice. It [24] can't say that we're going to allow this person to be an administrative debtor or not. They simply are thrown into the process and I think that that is significant. So for those three key reasons, the fact that there was an express subordination, the fact that at the inception the only purpose of the 11 was to liquidate for the bank's

benefit, and the fact that it was an administrative involuntary creditor, I think should require that the Boatmen's case be limited to facts that have those circumstances present. If those circumstances aren't present, if none of them are present, then I think we still have the Boron Farm standard, the one that's been around for ten years and not mentioned in the Boatmen's case. That standard, as the Court will recall, is a much more narrow specific standard where you have to show the expenditure was primarily for the benefit of the secured creditor, that it was — even it there's an indirect benefit to the secured creditor, for example, by the fact that Workers' Compensation insurance existed, even if there was an indirect benefit, that's not enough to charge under 506(c). You have to have something that is a — is directly and immediately identified for — specifically for that secured creditor as opposed to something that benefits the estate generally. Magna, obviously, did not have a lien on the workers. An expenditure of funds for Workers' Compensation would not be done primarily just to benefit [25] Magna. It is a requirement that the debtor has just in order to operate its estate and operates for the benefit of all creditors. And so I think that the Boron standard still exists and I think when you apply it to this case, Hartford doesn't satisfy it. Would Hartford satisfy if the Boatmen's standard applies? I think so because I don't know what doesn't apply under the Boatmen's standard. But I don't think the Boatmen's standard applies. Judge, those are the separate independent reasons why we think that the Hartford application should be denied and what I would like to do is at this time tender to the Court both the summary of our arguments that I've prepared as well as our legal memorandum on the 364(e) issue.

THE COURT: All right. Thank you.

MR. SPECTOR: Thank you, Judge.

THE COURT: Thank you. Ms. Alper.

MS. ALPER: Yes, Judge, and I will try to respond to Mr. Spector's arguments in the order in which he presented them. With regard to his argument that 364(e) protects the bank, Hartford would argue that 364(e) arguably in this case it doesn't even apply. This is not an appeal of that order. One of the problems in this case is the lack of notice of the proceeding to The Hartford. In referring to an appeal, I believe 364(e) contemplates that the creditor had notice and an opportunity to be heard in the first instance, lost, [26] appealed and didn't post a bond to stay the appeal. With regard to the argument that the Boatmen's decision, where the bank expressly subordinated its debt to administrative claims, I think that the provisions of the Boatmen's order are irrelevant. To decide that this distinction compels a different result would allow a secured creditor to put in its order, no 506(c) claims, go out and maximize the value of its collateral, allow the debtor to continue to lose money, incur its administrative expenses, and then run off with all the proceeds and leave everybody hanging. Maybe that's okay in a case where the people knowingly are doing business with the debtor-in-possession, don't request payment in advance or adequate assurance that they're going to get paid, but in this instance you had a debtor whose monthly operating reports indicated from December 1991 forward that it wasn't paying its Comp. premiums. And all of those were filed with the Court, provided to the bank, I suppose, and they just

weren't paying them. Furthermore, if you look at Joint Exhibit 2, the debtor knew every month that it was incurring liability for Comp. coverage in at least the amount of $8,592. The budget amounts change over time. But it's in there. With respect to the argument that Hartford did not rely on 506(c) in allowing the debtor to go on, that's true. We didn't know about the bankruptcy proceeding. But furthermore, had we known about the bankruptcy proceeding, [27] there is enough case law out there indicating that a Worker's Comp. coverage is an executory contract. Hartford could have come in under §365, compelled the debtor to either assume the contract, pay the amount of pre-petition premiums to cure the default and go forward, or alternatively, even if the Court did not compel the debtor to assume the contract, they would have at least compelled the debtor to make sure that the payments of the premiums were made on a regular basis and the bank would have been on notice and everybody would have known and been protected going forward. Facts, you can't change them in terms of the equities of the case. The — clearly we have paid out less in claims than we have collected in premiums. We have, if you add the amount of claims now in reserve plus the amount we've paid out to-date, it is still less than the amount of premiums. There are still two open claims. Yes, that those amounts held in reserve may increase. They've increased about $20,000 in the last six months. Workers' Comp. premiums are, however, based on the amount of payroll in each classification multiplied by the rate in each state. They're not negotiable. The risk is there regardless of the amount of claims asserted. And regardless of the amount of claims that are paid out or reserved for, the premiums are what they are and the bank has provided no evidence whatsoever that the premiums charged were more

than what was on file with the insurance [28] Commissioners in each of the states where Hen House conducted business. With regard to the delinquencies in cancellations, I suppose, yes, The Hartford could have cancelled the policy or could have tried to cancel due to the debtor's non-compliance with completing its monthly reports of risk, could have cancelled in June when the full payment was not made. It appeared on a non-payment cancellation list. Ms. Zuk's deposition indicates that she then goes to underwriting for cancellation; Workers' Comp. requires 30 days notice of cancellation. But the time it got to the person to be cancelled, it was too late to cancel. The policy ran through its term. Hen House did make efforts and I did not read those portions of Ms. Zuk's deposition. Hartford did make efforts to collect from Hen House after the policy lapsed. Collection letters were sent, demands were made, they weren't responded to. With regard to the argument that the Boron standard remains alive, I disagree with Mr. Spector's argument in that if it did remain alive, I can't see how. The 8th Circuit reversed Judge See and the district court on the issue of whether or not the penalties and interest on the taxes were not chargeable under 506(c). Both Judge See and the district court felt that the penalties and interest were not consented to by the bank, were not contemplated by the bank, did not benefit the bank and, therefore, were not chargeable against the bank. The distinction that Mr. [29] Spector makes in the Boatmen's case with regard to the express subordination of the liens to administrative claims, as I argued earlier, I don't know that that's relevant. To make it so would mean that lenders could just simply stick a 506(c) buyer in their order and go merrily along and leave trailing behind them unpaid administrative claims while they maximize the value of their assets held as

collateral. With regard to Mr. Spector's argument that the initial lending in the Hen House case was to enable the debtor to reorganize, that was, in fact, the stated purpose. However, it became abundantly clear very early in the case — I think you — there is Mr. Pressman's examiner's report and then the flurry of motions filed sometime early in 1992 with regard to sales of assets, that it became clear that they were in that liquidation mode and everything was to be just sold off and the bank's collateral maximized. At the same time they continued to operate and incur additional unsecured debts, which went unpaid. In fact, I reviewed the Chapter 7 schedules which indicate a large number of trade, utility companies unpaid. Although, Hartford is listed as a creditor in those Chapter 7 schedules in an unknown amount, the debtor didn't put them on the matrix. So even when the Chapter 7 schedules were filed, we weren't notified. With regard to the distinction that the Boatmen's and Annette Ford case involved the IRS, I don't know that that distinction is [30] relevant in that the IRS, first of all, receives notice of every Chapter 11 case. They have the absolute right, if you're not paying your withholding taxes, to come in and shut you down immediately. And they often do. There's never a case where the IRS doesn't have notice of what's going on in a Chapter 11 case or that a Chapter 11 case is on file. Talking about a case where a creditor sat on their rights, I think the Boatmen's case was one where the IRS sat around for a couple of quarters, determined the amount and the extent of their claim by the length of time that they sat around, and also determined the penalties and interest by the length of time that they sat around. And the 8th Circuit found none of those things to be relevant in deciding that not only the amount of withholding taxes, but also the interest and

penalties accruing thereon were chargeable against their collateral. And in lieu of all of those factors, I think that the Hartford claim for an administrative expense and charged against Magna's collateral should be sustained. I would also ask for the opportunity to, in a week, ten days, to summarize those arguments in a brief memorandum and to respond with some contrary case law to Mr. Spector's memorandum regarding 364(e), namely, the 11th Circuit Saybrook (phonetic) opinion.

THE COURT: All right. Thank you very much. Did you have anything to add, Mr. Spector in rebuttal?

[31] MR. SPECTOR: Judge, unless you have questions, I think that you've heard it all.

THE COURT: No, I don't have any questions. You said ten days. Today is —

MS. ALPER: It's the 15th.

THE COURT: — the 5th. What about April 15th?

MS. ALPER: Sounds good, Judge.

THE COURT: Okay. Now, what I'd like both of you to do, in addition to whatever you want to file, Ms. Alper, if both of you will file for me a memorandum for my signature as if you're writing my opinion and an order to go with it. And all you've got to do is take the opinion I previously wrote, you can use that for form. So what I need from you is your viewpoint, if you were the judge, and considering the

evidence that we've had so far, a memorandum of findings of fact, conclusions of law, setting forth your client's position. And how much time do you need for that?

MR. SPECTOR: The same deadline is fine with me, if that's okay with Ms. Alper.

MS. ALPER: If you can maybe make it that Monday. That probably would be easier for me. The 18th. Is that a bad day for you, Judge?

THE COURT: No.

MS. ALPER: I'm looking at your calendar and I can't figure out what the circles and the X's all mean.

[32] THE COURT: The red circles are Mrs. Kehoe's reminder that on the 12th is, I think — I think the first red circle of the month is usually Diversified and the second one is Spirit. It's one way or the other.

MS. ALPER: Okay.

THE COURT: No, those dates — the 18th is fine, if that's what's agreeable with you.

MS. ALPER: Okay.

THE COURT: I don't really have any strong feelings. Anything further?

MS. ALPER: No, Your Honor.

Transcript of Hearing

THE COURT: Thank you very much. We'll stand adjourned.

(Proceedings concluded at 11:50 A.M.)

* * * *

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION DATED AUGUST 14, 1996

UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION OF MISSOURI
EASTERN DIVISION

Case No. 91-45623-293
Chapter 7

In re

HEN HOUSE INTERSTATE, INC.,

Debtor.

HARTFORD UNDERWRITERS
INSURANCE COMPANY,

Movant,

– v –

MAGNA BANK OF ILLINOIS,

Respondent.

Motion No. 463

MEMORANDUM OPINION

JURISDICTION

This Court has jurisdiction over the parties and subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334, 151, and 157 and Local Rule 29 of the United States District Court for the Eastern District of Missouri. This is a "core proceeding" pursuant to 28 U.S.C. §157(b)(2)(A), which the Court may hear and determine.

PROCEDURAL BACKGROUND

1. On September 5, 1991, Hen House Interstate, Inc. (Debtor), filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. On October 25, 1991, the Court entered its Final Order Authorizing Debtor to Obtain Post-Petition Secured Credit, Granting Senior Liens and Administrative Priority Expense, Modifying Automatic Stay, Providing Adequate Protection and Authorizing Agreements with Landmark Bank of Illinois (the Final Order).[1]

2. After the issuance of the Final Order, Magna Bank of Illinois provided this Debtor with debtor-in-possession financing in the amount of $300,000 and allowed the Debtor to use Magna's cash collateral.

---

1. When the Final Order was entered, Landmark Bank of Illinois extended financing to the Debtor. Later, Magna Bank of Illinois succeeded to the interest of Landmark Bank of Illinois. For convenience, reference is made to Magna throughout this opinion, notwithstanding that certain facts pertain to Landmark Bank prior to its acquisition by Magna.

3. On January 20, 1993, this case was converted to a Chapter 7 proceeding. The Court appointed Robert J. Blackwell to serve as trustee of the Chapter 7 estate.

4. On June 29, 1993, Hartford Underwriters Insurance Company (Hartford) filed an Application for Allowance of Administrative Expense Pursuant to 11 U.S.C. § 503 and Charge Against Collateral Pursuant to 11 U.S.C. § 506(c) (the Hartford Application). In the Hartford Application, Hartford asked the Court to authorize it to employ section 506(c) and recover the unpaid workers' compensation premiums Debtor owed it for coverage provided post-petition from property securing Magna's claim. Magna objected to the Hartford Application.

5. Magna argues that the Court should deny the Hartford Application for the following reasons:

1. The Court cannot modify or ignore provisions in the Final Order specifically prohibiting the type of relief requested in the Hartford Application.

2. The equities in this case weigh against allowing Hartford to charge Magna's collateral with the remaining outstanding balance on the Debtor's workers' compensation insurance premiums.

3. Hartford's claim for unpaid workers' compensation does not satisfy the narrow standard for recovery under section 506(c) enunciated by the Eighth Circuit in *Brookfield Production Credit Association v. Borron*, 738 F.2d 951 (8th Cir. 1984),

which Magna maintains remains in existence and applies to this case, notwithstanding the broad section 506(c) standard used by the Eighth Circuit in *I.R.S. v. Boatmen's First National Bank of Kansas City*, (hereinafter *Boatmen's*) 5 F.3d 1157 (8th Cir. 1993).

In response, Hartford argues that:

1. The provisions of the Final Order should not apply to Hartford because it was not aware of the Debtor's bankruptcy proceedings until March of 1993 and did not receive actual notice of the Final Order's entry.

2. The equities of the case favor Hartford.

3. The broad standard for recovery under section 506(c) used by the Eighth Circuit in the *Boatmen's* decision applies to this case and has been satisfied by Hartford.

6. The Court conducted an evidentiary hearing. The evidence consisted of a Trial Stipulation of Facts agreed upon and submitted jointly by Hartford and Magna and four exhibits consisting of (i) the Debtor's Emergency Motion for Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. 364, and Granting Adequate Protection to Pre-Petition Secured Party; (ii) the Emergency Order entered by the Court on September 6, 1991, authorizing the debtor-in-possession financing on an emergency basis; (iii) the Final Order; and (iv) the transcript, together with all

exhibits thereto, including the deposition of Mary Zuk, Hartford's designated representative, who testified on Hartford's behalf. No other evidence was adduced at trial.

JOINT STIPULATION OF FACTS

The parties stipulated to the following facts as true:

1. Hen House filed Chapter 11 proceedings on September 5, 1991.

2. Hartford provided workers' compensation insurance coverage for the Debtor for the period from September 1, 1991, through September 1, 1992. The Debtor was required to carry insurance during that period.

3. The Debtor previously paid premiums totaling $82,294 to Hartford on account of the insurance

4. Hartford claims that it still is owed $51,871.40 for the insurance premiums for the post-petition period during which the Insurance was in force. Magna has no evidence to the contrary with respect to the amount outstanding.

5. Hartford has paid losses on worker's compensation claims made under the insurance totaling $32,551. In addition, Hartford presently has reserved, but has not been paid, $38,549 on account of potential losses. As of August 1993, the amount held in reserve on account of potential losses was $20,821. The total amount of losses actually paid by Hartford under the insurance increased by $179 from August of 1993 to April 5, 1994. No further claims were made as of September 1992.

6. In making the post-petition debtor-in-possession loan to the Debtor, Magna anticipated that it, as well as the Debtor's other creditors, would receive a greater return through a Chapter 11 filing in which the Debtor's operations would continue in hope of reorganization, rather than from an immediate liquidation of the Debtor's property outside of Chapter 11.

7. When the Debtor filed a petition under Chapter 11 on September 5, 1991, the Debtor anticipated that it would continue its operations and reorganize its business. The reorganization prospects did not materialize and sometime in 1992, the Debtor liquidated its assets through a combination of going-concern sales and sales of shut-down properties.

8. As of September 5, 1991, the Debtor owed Magna approximately $4 million.

9. Magna has not received the full amount owed to it by the Debtor. Magna has lost approximately $1,500,000 in principal, plus additional amounts for unpaid interest and attorneys fees and expenses.

10. Magna previously disbursed to the Debtor the full $300,000 available under the post-petition debtor-in-possession loan it made to the Debtor.

11. Hartford was not aware of the Debtor's bankruptcy proceedings until March of 1993.

The Court accepts and adopts those facts set forth in the above Joint Stipulation of Facts along with the following findings as the Court's findings of fact:

Paragraph 33 of the Final Order provided the following express prohibition against charging Magna or its collateral with administrative expenses under section 506(c) of the Bankruptcy Code. The Final Order stated:

> 33. Except for the Carve-Out [$10,000 for professional fees], no expenses of administration of Debtor's Chapter 11 case or any future proceeding which may develop out of such case, including liquidation in bankruptcy or other proceeding under the Bankruptcy Code, shall be charged against Landmark or the Collateral, whether pursuant to 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of Landmark, and no such consent shall ever be implied from any action, inaction or acquiescence by Landmark.

DISCUSSION

The issues in the present case are: 1) whether Hartford, an administrative claimant who provided workers' compensation insurance post-petition for the Debtor, has standing to recover those expenses under 11 U.S.C. § 506(c); and 2) whether payment of workers' compensation insurance is a reasonable and necessary expense for preserving or disposing of the Debtor's bankruptcy estate.[2] Magna, the

---

2. The Court notes that, initially, Hartford's standing to bring suit under § 506(c) was challenged, *see* Objection of Magna Bank of Illinois to Hartford Underwriters Insurance Company Application for Allowance of Administrative Expense Pursuant to 11 U.S.C. (Cont'd)

secured creditor, stipulates to the fact that it agreed to the continued operation of the business post-petition.

The bankruptcy estate generally must pay administrative expenses out of the unencumbered assets of the debtor. *Boatmen's*, 5 F.3d 1157, 1159 (8th Cir. 1993). In most instances, it cannot charge those expenses to the secured creditors against their collateral pursuant to section 503. An exception to that rule exist under section 506(c). Section 506(c) states, "[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of the claim." The section was intended to prevent the secured creditor from benefitting at the expense of the trustee or debtor in possession. It applies in situations where an estate

---

(Cont'd)
Section 506(c), but at the hearing held on this matter, Magna conceded that under the Eighth Circuit's *Boatmen's* decision, Hartford has standing. The majority of the Circuits which have published opinions on this issue have read section 506(c) broadly enough to permit administrative claimants standing to recover. *See Boatmen's*, 5 F.3d at 1159; *North County Jeep and Renault, Inc. v. Gen. Elec. Credit Corp. (In re Palomar Truck Corp.)*, 951 F.2d 229 (9th Cir. 1991), *cert. denied*, 506 U.S. 821, 113 S.Ct. 71 (1992); *In re Parque Forestal, Inc.*, 949 F.2d 504 (1st Cir. 1991); *New Orleans Pub. Serv. Inc. v. First Fed. Sav. and Loan Ass'n. (In re Delta Towers, Ltd.)*, 924 F.2d 74 (5th Cir. 1991); *Equitable Gas Co. v. Equibank N.A. (In re McKeesport Steel Castings Co.)*, 799 F.2d 91 (3d Cir. 1986). *Contra Ford Motor Credit Co. v. Reynolds & Reynolds Corp. (In re JKJ Chevrolet)*, 26 F.3d 481, 486 (4th Cir. 1994) (holding that only trustee has standing to bring suit under section 506(c)).

continues to operate primarily for the benefit of the secured creditor.

In *Boatmen's* the Court required Boatmen's, a secured creditor, to pay post-petition payroll taxes as costs of preserving the debtor as a going concern. *Id.* The case involved a company that owned and operated a string of dry cleaning stores. *Id.* at 1158. When the company filed for bankruptcy, the secured creditor, Boatmen's, agreed to extend credit to debtor post-petition so that it could continue operating and sell its business as a going concern. *Id.* at 1160. It did so with the experience of receiving a higher return on its investment from the sale of a going concern rather than a liquidation sale. *Id.* In fact, more than half of the debtor's stores were sold as going concerns. *Id.* at 1158-59. The Court explained its holding, "[t]he creditor, however, in the expectation of an overall benefit, agreed to accept the expenses and risks associated with that anticipated benefit. One of those expenses was payroll taxes, and one of the risks was nonpayment of the taxes and its consequences." *Id.* The Court viewed the unpaid taxes as a de facto loan from the government without which the estate could not have continued operations. *Id.* The creditor in Boatmen's agreed to accept the risk of continuing operations and the risk paid off. Boatmen's received a greater return on its investment than it would have in a liquidation.

The *Boatmen's* court frequently cited *United States v. Annett Ford, Inc. (In re Annett Ford)*, 64 B.R. 946 (D. Neb. 1986). The *Annett Ford* court addressed the same issues as the *Boatmen's* court but the secured creditor in *Annett Ford* was less fortunate than the secured creditor in *Boatmen's*.

Despite the fact that the continued operation of the business did not prove successful, the *Annett Ford* court found, "[t]he preservation of the going concern value of a business can constitute a benefit to a secured creditor under 11 U.S.C. § 506(c)." *Id.* at 947. The *Boatmen's* court adopted the *Annett Ford* court's analysis and did not limit its holding to recovery for administrative claimants who receive overall financial benefit. *Boatmen's*, 5 F.3d at 1160.

The *Boatmen's* and *Annett Ford* courts based their holdings on the theory that when a creditor agrees to the continued operation of a debtor's business, it also agrees to accept the risks associated with the potential benefit it seeks. Administrative claims such as unpaid payroll taxes and penalties are a foreseeable risk.

Although facts in the present case are similar to those in *Boatmen's*, they are more like the facts in *Annett Ford*. The secured creditor, Magna, agreed to the continued operation of Debtor's business under a Chapter 11 plan of reorganization. Virtually all real and personal property of the Debtor was encumbered by and subject to Magna's first priority perfected lien. Magna stood to benefit the most from a successful reorganization. When Magna agreed to the continuing operation of the Debtor, it openly expressed its hopes of receiving an increase on its return. In so agreeing, Magna implicitly agreed to accept the risks associated with the hoped for benefit. Under Missouri workers' compensation laws, an operating business is obligated to maintain workers' compensation insurance unless it can demonstrate that it has the ability, alone or in a group, to self-insure itself. See Mo. Rev. Stat. § 287.280 (1994). Thus, the cost of the insurance

Hartford provided was a reasonable, necessary and foreseeable expense of continuing this business operations. Unfortunately for Magna, the risk did not produce the desired results, and the continued operation of the business failed to improve its recovery. However, this does not preclude the administrative claimant from recovering. A secured creditor who is willing to benefit from a successful reorganization may not circumvent its responsibility to pay for necessary expenses with the use of disclaimers such as the one used in Paragraph 33 of the Final Order.

In its brief to the Court, Magna makes three arguments against allowing Hartford to collect its claim from Magna's collateral. First, Magna argues that this Court cannot modify or ignore Paragraph 33 of the Final Order which prohibits charging Magna's collateral for post-petition administrative expenses. It argues that: 1) to do so would discourage creditors from making post-petition loans; 2) Magna loaned the money in reliance on the language in Paragraph 33; and 3) Hartford did not know about the bankruptcy proceeding until after it extended the credit and could not have done so in reliance on rights under section 506(c). Magna misunderstands the holding in *Boatmen's*. The pertinent question under section 506(c) is whether the secured creditor agreed to the continuing operation of the business with the hope that the continuation would allow it to recover more than it would have in a liquidation. If it did, then according to the Eighth Circuit, along with the potential for benefit, it accepted the risk of foreseeable costs and expenses of preserving the business. Paragraph 33 is not relevant to the inquiry. An administrative claimant has standing under section 506(c) if it extends reasonable and necessary services

to the debtor. Furthermore, the administrative claimant is not required to show reliance on section 506.

Second, Magna argues that equities in the case weigh against allowing Hartford to charge Magna's collateral. The Court disagrees. Equities do not permit Magna to receive a windfall at the expense of the Debtor or the estate's administrative claimants. Because the attempt to reorganize was primarily for the benefit of Magna, Magna must pay the costs.

Third, Magna attempts to distinguish the facts in the present case from *Boatmen's* and asks the Court to apply the stricter standard for recovery under section 506(c) enunciated in an earlier Eighth Circuit case, *Brookfield Prod. Credit Ass'n. v. Borron*, 738 F.2d 951 (8th Cir. 1984). Magna's reliance on *Borron* is misplaced. The *Borron* case involved Debtors who used the proceeds from the sale of the secured creditor's collateral to pay other creditors. The Circuit Court held that the Debtors, not the secured creditor, benefitted from the continued operation of the business and it refused to charge the secured creditor for administrative expenses. The facts in the present case are distinguishable from those in *Borron*. The primary beneficiary of Hen House's continued operation was Magna and the payment of workers' compensation insurance was an expense necessary to Hen House's continued operation. The extension of insurance coverage was a benefit to the secured creditor who would not have had the opportunity to attempt greater recovery without it. Workers' compensation insurance or a demonstrated ability to self-insure one's potential liability, like taxes, is required by law in Missouri. Unlike the *Borron*

debtor, Hen House did not take proceeds from Magna's collateral and use it to pay its unsecured creditors.

The Court holds that Magna, a secured creditor who agreed to the preservation of the debtor's business as a going concern, shall be charged with the payment of post-petition workers' compensation premiums under 11 U.S.C. § 506(c) as reasonable and necessary expenses.

An Order consistent with this Memorandum Opinion will be entered this date.

s/ David P. McDonald
DAVID P. McDONALD
U. S. Bankruptcy Judge

DATED: August 14, 1996
St. Louis, Missouri

UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION OF MISSOURI
EASTERN DIVISION

Case No. 91-45623-293
Chapter 7

In re

HEN HOUSE INTERSTATE, INC.,

Debtor.

HARTFORD UNDERWRITERS
INSURANCE COMPANY,

Movant,

– v –

MAGNA BANK OF ILLINOIS,

Respondent.

Motion No. 463

ORDER

For the reasons set forth in the Memorandum Opinion filed this date, it is

ORDERED THAT Magna Bank of Illinois, a secured creditor who agreed to the preservation of the debtor's business as a going concern, shall be charged with the payment of post-petition workers' compensation premiums under 11 U.S.C. § 506(c) as reasonable and necessary expenses.

s/ David P. McDonald
DAVID P. McDONALD
U. S. Bankruptcy Judge

Dated: August 14, 1996
St. Louis, Missouri

NOTICE OF APPEAL TO THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION DATED AND FILED AUGUST 23, 1996

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Case No. 91-45623-293
Chapter 7

Motion No. 463

In re

HEN HOUSE INTERSTATE, INC.,

Debtor.

HARTFORD UNDERWRITERS INSURANCE COMPANY,

Movant,

v.

MAGNA BANK OF ILLINOIS, N.A.,

Respondent.

NOTICE OF APPEAL

Magna Bank of Illinois, N.A., the respondent, appeals under 28 U.S.C. § 158(a) from the Order entered by the United States Bankruptcy Court for the Eastern District of

Notice of Appeal to United States Bankruptcy Court

Missouri granting Hartford Underwriters Insurance Company's Application for Allowance of Administrative Expense Pursuant to 11 U.S.C. § 503 and Charge Against Collateral Pursuant to U.S.C. § 506(c) entered in this contested matter on the fourteenth (14th) day of August, 1996.

The parties to the order appealed from and the names of their respective attorneys are as follow:

PARTY	ATTORNEYS
Magna Bank of Illinois, N.A.	Robert H. Brownlee David D. Farrell THOMPSON COBURN One Mercantile Center, Suite 3400 St. Louis, Missouri 63101 (314) 552-6000 (314) 552-7000 (Fax)
Hartford Underwriters Insurance Company	Wendi-Alper Pressman VINCENT D. VOGLER & ASSOCIATES 11330 Olive Street Road St. Louis, Missouri 63141 (314) 567-7970 (314) 567-5053 (Fax)
Hen House Interstate, Inc., Debtor	David A. Warfield HUSCH & EPPENBERGER 100 N. Broadway St. Louis, Missouri 63102 (314) 622-0667 (314) 421-0239 (Fax)

Notice of Appeal to United States Bankruptcy Court

Robert J. Blackwell, Trustee	Christopher J. Rausch BLACKWELL & ASSOCIATES, P.C. 1010 Market Street, Suite 1440 St. Louis, Missouri 63101 (314) 621-3535 (314) 621-5179 (Fax)
U.S. Trustee	Martha Dahm U.S. TRUSTEE'S OFFICE 815 Olive Street, Suite 324 St. Louis, Missouri 63101 (314) 539-2976 (314) 539-2990 (Fax)

Respectfully submitted,

s/ Robert H. Brownlee
Robert H. Brownlee, 2726
David D. Farrell, 5048
THOMPSON COBURN
One Mercantile Center
St. Louis, Missouri 63101
(314) 552-6000
(314) 552-7000 (Fax)

ATTORNEYS FOR
APPELLANT/RESPONDENT
MAGNA BANK OF ILLINOIS
N.A.

STIPULATION WITH RESPECT TO BANKRUPTCY COURT ORDER FROM WHICH APPEAL HAS BEEN TAKEN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Case No. 91-45623-293
Chapter 7

District Case No. ____

In re

HEN HOUSE INTERSTATE, INC.,

Debtor.

MAGNA BANK OF ILLINOIS, N.A.,

Appellant/Respondent,

v.

HARTFORD UNDERWRITERS
INSURANCE COMPANY,

Appellee/Movant.

STIPULATION WITH RESPECT TO BANKRUPTCY COURT ORDER FROM WHICH APPEAL HAS BEEN TAKEN

Stipulation re Bankruptcy Court Order

COME NOW Appellant/Respondent Magna Bank of Illinois, N.A. ("Appellant") and Appellee/Movant Hartford Underwriters Insurance Company ("Appellee") and jointly stipulate and agree to the following regarding the Order entered by the United States Bankruptcy Court for the Eastern District of Missouri granting Hartford Underwriters Insurance Company's Application for Allowance of Administrative Expense Pursuant to 11 U.S.C. § 503 and Charge Against Collateral Pursuant to 11 U.S.C. § 506(c) (the "Order"), with respect to which Order Appellant has taken an appeal to this Court:

1. On August 14, 1996, The Honorable David P. McDonald, the United States Bankruptcy Judge for the Eastern District of Missouri, entered the Order. On August 23, 1996, Appellant timely filed its Notice of Appeal in regard thereto.

2. Pursuant to the Order, the Bankruptcy Court ordered that Appellant's collateral "be charged with the payment of post-petition workers' compensation premiums under 11 U.S.C. § 506(c)." The Order, however, did not specify the amount of post-petition workers' compensation premiums to be so charged.

3. In conjunction with the entry of the August 14, 1996 Order, the Bankruptcy Court also entered a Memorandum Opinion which contained a recitation of certain jointly Stipulated Facts, including, the fact that Appellee "claims that it still is owed $51,871.40 for the insurance premiums for the post-petition period during which the Insurance is in force [and] [Appellant] has no evidence to the contrary with respect to the amount outstanding."

Stipulation re Bankruptcy Court Order

4. Appellant and Appellee jointly stipulate and agree that the amount of post-petition workers' compensation premiums referenced in the Order is and was intended to be the $51,871.40 figure set forth in the Bankruptcy Court's Memorandum Opinion.

5. Appellant and Appellee further jointly stipulate and agree that neither party shall assert or otherwise maintain that the Bankruptcy Court's August 14, 1996 Order is deficient, not final, or otherwise non-appealable specifically because it does not set forth the foregoing dollar amount.

Respectfully submitted,

s/ Robert H. Brownlee
Robert H. Brownlee, 2726
David D. Farrell, 5048
THOMPSON COBURN
One Mercantile Center
St. Louis, Missouri 63101
(314) 552-6000
(314) 552-7000 (Fax)

ATTORNEYS FOR
APPELLANT/
RESPONDENT
MAGNA BANK OF
ILLINOIS, N.A.

s/ Wendi Alper-Pressman
Wendi Alper-Pressman
VINCENT D. VOGLER
& ASSOCIATES
11330 Olive Street Road
St. Louis, Missouri 63141
(314) 567-7970
(314) 567-5053 (Fax)

ATTORNEYS FOR
APPELLEE/MOVANT
HARTFORD
UNDERWRITERS
INSURANCE COMPANY

MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION DATED SEPTEMBER 10, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 4:96-CV-1991 CAS

In Re:

HEN HOUSE INTERSTATE, INC.

Debtor.

MAGNA BANK OF ILLINOIS,

Appellant,

v.

THE HARTFORD UNDERWRITERS INSURANCE COMPANY,

Appellee.

MEMORANDUM

This is an appeal from a final order of the United States Bankruptcy Court for the Eastern District of Missouri granting appellee The Hartford Underwriters Insurance Company's ("Hartford") Application for Allowance of

Memorandum Dated September 10, 1997

Administrative Expense Pursuant to 11 U.S.C. § 503 and Charge Against Collateral Pursuant to 11 U.S.C. § 506(c). *In re Hen House Interstate, Inc.*, No. 91-45623-293 (Bankr. E.D. Mo. Aug. 14, 1996). The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 158(a) and Rule 8001 of the Federal Rules of Bankruptcy Procedure.

The Bankruptcy Court's order permits Hartford to impose a charge on appellant Magna Bank of Illinois, N.A.'s ("Magna")[1] collateral under 11 U.S.C. § 506(c), for the administrative expense of worker's compensation insurance premiums. Hartford provided workers' compensation insurance to the debtor, Hen House Interstate, Inc., ("Debtor") from September 1, 1991 through September 1, 1992.

In this appeal, Magna contends the Bankruptcy Court erred as follows:

> (1) in holding that Hartford, as a party other than a bankruptcy trustee or debtor-in-possession, had standing to seek relief under the provisions of 11 U.S.C. § 506(c);
>
> (2) in holding that because Magna agreed to the continuing operation of the Debtor's business with

---

1. Appellant is presently known as Magna Bank, N.A. It is the successor in interest to the rights, claims and interests of Landmark Bank of Illinois under various financing and loan documents. For purposes of convenience, appellant is referred to as Magna throughout this memorandum, although certain facts pertain to Landmark Bank of Illinois prior of its acquisition by Magna.

the hope that the continuation would allow Magna to recover more than it would in a liquidation, Hartford could surcharge Magna's collateral 11 U.S.C. § 506(c) for any reasonable and necessary services provided to the Debtor, without requiring any showing that such services directly benefited Magna, and in granting Hartford's 11 U.S.C. § 506 (c) application even though no much showing was made in this case;

(3) in finding that it would not be inequitable to allow Hartford to surcharge Magna's collateral under 11 U.S.C. § 506(c) for unpaid worker's compensation insurance premiums; and

(4) in allowing Hartford to surcharge certain charges against Magna's collateral pursuant to the provisions of 11 U.S.C. § 506(c) after having previously entered a final order pursuant to the provisions of 11 U.S.C. § 364(c) and (d) that explicitly prohibited the imposition of any such charges against Magna's collateral without Magna's prior written consent, which consent was never given.

For the reasons which follow, the Court concludes the decision of the Bankruptcy Court should be affirmed.

Discussion.

In reviewing the judgment of the bankruptcy court, this Court reviews legal conclusions *de novo* and findings of fact

under a clearly erroneous standard. *In re Kiellsen*, 53 F.3d 944, 946 (8th Cir. 1995); *In re Muncrief*, 900 F.2d 1220, 1225 (8th Cir. 1990). The parties agree that issues 1, 2 and 4 present questions of law requiring *de novo* review, while issue 3 is subject to review under an abuse of discretion standard.

The Court adopts the Bankruptcy Court's statement of procedural background of this case and its factual findings, including the joint stipulation by the parties, as set forth in the Bankruptcy Court's Memorandum Order of August 14, 1996, at 1-6.

1. *Standing*. Magna argues that because Hartford is neither the bankruptcy trustee nor the debtor-in-possession, it lacks standing to seek recovery under 11 U.S.C. § 506(c). Magna contends the literal language of that statute clearly limits standing to the trustee and the debtor-in-possession, and thus there is no basis for permitting a third party to recover under § 506(c).

The Eighth Circuit has resolved this question contrary to Magna's position. *In United States I.R.S. v. Boatmen's First Nat'l Bank of Kansas City*, 5 F.3d 1157, 1159 (8th Cir. 1993) ("*Boatmen's*"), the Court unequivocally held that an administrative claimant has standing to recover under § 506(c). This Court is not free to disregard binding Eighth Circuit precedent. Thus, the Court concludes the Bankruptcy Court did not err in holding that Hartford, as an administrative claimant, has standing to recover under 11 U.S.C. § 506(c).

2. *Benefit to Magna*. Magna next argues that the Bankruptcy Court erred as a matter of law in holding Hartford was entitled to surcharge Magna's collateral for the amounts in question simply because Magna agreed to the continued operation of Debtor's business in Chapter 11 with the hope that the continuation would allow Magna to recover more than in a liquidation. Magna contends Hartford did not meet its burden to establish that the administrative expense directly benefited Magna.

Section 506(c) of the Bankruptcy Code is an exception to the general rule that administrative expenses of a bankruptcy estate may not be charged against secured collateral but rather share in the distribution of unencumbered assets of the debtor pursuant to 11 U.S.C. § 503. *Boatmen's*, 5 F.3d at 1159. Section 506(c) expresses and applies "the equitable principle that a lienholder may be charged with the reasonable costs and expenses incurred by the debtor . . . which are required to preserve or dispose of the property subject to lien to the extent the lienholder derives a benefit therefrom." 4 L. King, *Collier on Bankruptcy* ¶ 506.04, at 506-49 (15th Ed. rev. 1997).

Under § 506(c), an administrative expense may be surcharged against a secured creditor's collateral if three elements are established: (i) the expense was necessary; (ii) the expense was reasonable; and (iii) the expense directly benefited the secured creditor. *Brookfield Production Credit Ass'n v. Borron*, 738 F.2d 951, 952 (8th Cir. 1984) ("*Borron*"). Magna does not dispute the Bankruptcy Court's determination that the cost of the insurance provided by Hartford was a reasonable and necessary expense of

continuing Debtor's business operations. Magna contends only that the third element is not met, in that Magna was not directly benefited by the worker's compensation insurance.

Relying on the *Boatmen's* decision, the Bankruptcy Court held that because Magna agreed to the continued operation of the Debtor's business with the hope that the continuation would allow it to recover more than it would in a liquidation, it accepted the risk of being charged with the reasonable and necessary costs and expenses of preserving the business. This Court agrees. Where a holder of secured credit consents to the preservation of a debtor's business as a going concern, a "court may treat such consent as an advance acknowledgement that certain of the costs and expenses incurred would benefit such holder. Thus, when such consent has been given, the courts will allow a greater latitude with respect to allowance of costs and expenses." 4 *Collier* ¶ 56.04[3][a][i] at § 506-54,-55; *see Boatmen's*, 5 F.3d at 1160 (allowing recovery of postpetition payroll taxes including penalty and interest where the secured creditor consented to preservation of the debtor's business as a going concern); *In re Annett Ford, Inc.*, 64 B.R. 946, 947 (D. Neb. 1986) (allowing recovery of payroll taxes, penalty and interest which were costs of unsuccessful postpetition operation of business consented to by secured creditor).

In this case, after Magna initially sought relief from the automatic stay, it decided instead to make a $300,000.00 post-petition debtor-in-possession loan to the Debtor. In so doing, Magna anticipated it would receive a greater return through a Chapter 11 filing in which the Debtor's operations

would continue in the hope of a reorganization, rather than from an immediate liquidation of the Debtor's property outside of Chapter 11. Magna was the primary beneficiary of Debtor's continued operation. The payment of worker's compensation insurance was an expense necessary to Debtor's continued operation, as worker's compensation insurance or a demonstrated ability to self-insure is required by law in Missouri. Thus, it follows under *Boatmen's* and *Annett Ford* that the insurance expense may be charged against Magna, even though the Debtor's Chapter 11 reorganization was ultimately unsuccessful.

The fact that the secured creditor in *Boatmen's* specifically agreed to subordinate its post-petition superpriority liens to legitimate administrative expenses of the bankruptcy estate, while relevant to the Eighth Circuit's decision, is not controlling and does not require a different result in this case. The holding of *Boatmen's* turns on the secured creditor's agreement to the preservation of the debtor as a going concern, not its agreement to be subordinated to administrative expenses. *Boatmen's*, 5 F.3d at 1160.

The Eighth Circuit's earlier *Borron* decision, on which Magna relies, is distinguishable because the secured creditor in *Borron* did not consent to continuation of the debtor's business as a going concern. As a result, the Court applied a stricter standard under which a direct, quantifiable benefit to the secured credit must be shown before an administrative expense may be surcharged against secured collateral.

Therefore, the Court concludes the Bankruptcy Court did not err in holding that Hartford could surcharge Magna's

collateral under 11 U.S.C. § 506(c) for worker's compensation insurance premiums.

3. *Abuse of Discretion.* Next, Magna contends that the Bankruptcy Court abused its discretion in permitting Hartford to surcharge Magna's collateral under 11 U.S.C. § 506(c), when Hartford (i) had already received premium payments in excess of any insurance benefits it would have to pay out on the Debtor's behalf, and thus is not seeking to recover for actual losses sustained but rather to obtain a profit; (ii) displayed an extraordinary lack of diligence in protecting its rights under the insurance policy and thus failed to take reasonable efforts to reduce its claim; and/or (iii) expressly acknowledged that it did not rely on the provisions of § 506(c) in providing unsecured credit to the Debtor.

The Court will not reverse the Bankruptcy Court's decision unless that court abused its sound discretion. *In re Jones Truck Lines, Inc.*, 63 F.3d 685, 686 (8th Cir. 1995). "Abuse of discretion will be found only when the . . . court's decision is based on an erroneous view of the law or a clearly erroneous assessment of the evidence." *Richards v. Aramark Services, Inc.*, 108 F.3d 925, 927 (8th Cir. 1997) (citation omitted). Generally, a discretionary decision will not be reversed if the decision "remains within 'the range of choice' available to the . . . court, accounts for all relevant factors, does not rely on any irrelevant factors, and does not constitute a 'clear error of judgment.' " *Walser v. Toyota Motor Sales, U.S.A., Inc.*, 43 F.3d 396, 401 (8th Cir. 1994) (quoting *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 970 (8th Cir. 1984)).

Magna contends that the Bankruptcy Court's decision to permit the Hartford surcharge was a clear error of

judgment. This Court disagrees. Magna does not contest the Bankruptcy Court's factual findings that (i) Magna stood to benefit the most from a successful reorganization of the Debtor; (ii) the Debtor's attempted reorganization was primarily for the benefit of Magna; (iii) Magna was the primary beneficiary of the Debtor's continued operations; and (iv) the cost of the worker's compensation insurance was a reasonable and necessary expense of continuing the business. Under these circumstances, it is not an abuse of discretion to require Magna to bear the reasonable and necessary expense of insurance coverage the Debtor was required to carry by state law.

Therefore, the Court concludes the Bankruptcy Court did not abuse its discretion in holding that Hartford could surcharge Magna's collateral under 11 U.S.C. § 506(c) for worker's compensation insurance premiums.

4. *Final Debtor In Possession Order.* Finally, Magna argues that the Bankruptcy Court erred in allowing Hartford to surcharge Magna's collateral under § 506(c), after the Court previously entering a final order pursuant to 11 U.S.C. § 364(c) and (d) which explicitly prohibited the imposition of any administrative expense charges against Magna's collateral without Magna's prior written consent.[2]

---

2. *See* Final Order Authorizing Debtor to Obtain Post-Petition Secured Credit, Granting Senior Liens and Administrative Priority Expense, Modifying Automatic Stay, Providing Adequate Protection and Authorizing Agreements with Landmark Bank of Illinois, dated October 25, 1991 (the "Final DIP Order"). Paragraph 33 of the Final DIP Order states,

(Cont'd)

Magna argues that (i) under 11 U.S.C. § 364(e), a bankruptcy court cannot modify or alter its own postpetition financing order; (ii) Magna had a right to rely on the enforceability of the Final DIP Order; and (iii) by permitting Hartford to recover under § 506(c), the Bankruptcy Court deprived Magna of its protections under the Final DIP Order, and effectively modified the Order. Magna relies primarily on the Seventh Circuit's decision in *Kham & Nate's Shoes No. 2, Inc. v. First Bank of Whiting*, 908 F.2d 1351, 1355 (7th Cir. 1990) ("*Kham & Nate's*") for the proposition that a postpetition financing order cannot be modified by a bankruptcy court, even if it was erroneous or illegal when entered.[3]

The Bankruptcy Court's determination that Magna was not entitled to the protection of § 364(e) derives from its interpretation of the 8th Circuit's *Boatmen's* decision. The Bankruptcy Court found the pertinent inquiry in determining

---

(Cont'd)

> 33. Except for the Carve-Out [$10,000.00 for professional fees], no expenses of administration of Debtor's Chapter 11 case or any future proceeding which may develop out of such case, including liquidation in bankruptcy or other proceeding under the Bankruptcy Code, shall be charged against [Magna] or the Collateral, without the prior written consent of [Magna], and no such consent shall ever be implied from any action, inaction or acquiescence by [Magna].

3. The language of 11 U.S.C. § 364(e) is limited to reversal or modifications of orders on appeal. For purposes of this motion, the Court assumes without deciding that § 364(e) applies to a bankruptcy court's modification of its own orders.

whether a charge should be imposed under § 506(c) is whether the secured creditor agreed to the continuation of the Debtor's business with the hope that the continuation would allow the creditor to recover more than it would in a liquidation. Record on Appeal at 29, p. 10. The Court stated the Final DIP Order provision was "not relevant to the inquiry", *id.*, and noted further, "A secured creditor who is willing to benefit from a successful reorganization may not circumvent its responsibility to pay for necessary expenses with the use of disclaimers such as the one used in Paragraph 33 of the Final [DIP] Order." *Id.*, pp. 9-10.

The parties have not cited any authority from the Eighth Circuit concerning the effect of 11 U.S.C. § 364(e) on a claim for a surcharge of administrative expenses under § 506(c), and the Court has found none in independent research. Some authority exists in other jurisdictions that provisions in postpetition financing orders which prohibit the payment of § 506(c) administrative expenses from secured collateral are unenforceable. *See, e.g., In re Willingham Invs., Inc.*, 203 B.R. 75, 79 (Bankr. M.D. Tenn 1996) (vacating portion of a postpetition cash collateral order which attempted to prohibit payment of administrative expenses from the secured creditor's collateral, where the continuation of the debtor's business in Chapter 11 occurred primarily for the benefit of the undersecured creditor); *McAlpine v. Comerica Bank-Detroit (In re Brown Bros., Inc.)*, 136 B.R. 470, 474 (Bankr. W.D. Mich. 1991) (refusing to enforce provision of cash collateral order attempting to immunize secured creditor from any surcharge payment obligations under 11 U.S.C. § 506(c) "in light of the congressional mandate that a trustee have the authority to use a portion of secured collateral for its

preservation or proper disposal "); *see also* Stephen A. Stripp, *Balancing of Interests in Orders Authorizing Use of Cash Collateral in Chapter 11*, 21 Seton Hall L. Rev. 562, 578-79 (1991) (noting that while many cash collateral orders operate to prohibit claims under § 506(c), debtors, who are parties to the order, should not be permitted to waive the rights of other potential claimants).

The Court finds these authorities persuasive. As discussed more fully above, the Debtor's attempted reorganization was primarily for the benefit of Magna, Magna was the primary beneficiary of the Debtor's continued operations, and the cost of the workers' compensation insurance was a reasonable and necessary expense of continuing the Debtor's business. Under these circumstances, to permit Magna and the Debtor to agree between themselves that the expense of mandatory workers' compensation insurance may not be charged against Magna's collateral would be inequitable and would constitute a windfall for Magna at Hartford's expense.

In the alternative, the Court also concludes the Final DIP Order provision is unenforceable against Hartford based on due process considerations. It is undisputed that Hartford did not know Debtor had filed for bankruptcy protection until 1993. Hartford had no notice of the proceedings which led up to issuance of the Final DIP Order in October 1991, was not a party to the Order, and was not served with the Order. While notice of the Final DIP Order was given to the twenty largest unsecured creditors in accordance with Federal Rule of Bankruptcy Procedure 4001(c)(1) and (d)(1), only the Debtor and Magna's predecessor in interest were signatories to the Order.

Memorandum Dated September 10, 1997

It is true that a creditor must be able to rely on a bankruptcy court's financing order. Nonetheless, the rationale of the *Kham & Nate's* decision cited by Magna has been held not to apply where a debtor and lender ignore the due process rights of third parties. *See In re Marrs-Winn Co., Inc.*, 103 F.3d 584, 595 (7th Cir. 1996); *In re Tek-Aids Indus., Inc.*, 145 B.R. 253, 258-59 (Bankr. N.D. Ill. 1992); *In re Visual Indus., Inc.*, No. 94-3414, slip op. at 12 n.6 (D.N.J. Sept. 26, 1994). Because Hartford had no notice of the Final DIP Order and no opportunity to challenge it, the Court concludes the Order's provision prohibiting the charge of any administrative expense against Magna's collateral without its consent is not enforceable against Hartford.

For these reasons, the Court concludes the Bankruptcy Court did not err in holding that Paragraph 33 of the Final DIP Order does not preclude the imposition of a surcharge against Magna's collateral under 11 U.S.C. § 506(c).

Conclusion.

For the foregoing reasons, the Court concludes that the judgment of the Bankruptcy Court should be affirmed. An appropriate judgment will accompany this memorandum.

s/ Charles A. Shaw
CHARLES A. SHAW
UNITED STATES DISTRICT
JUDGE

Dated this 10th day of September, 1997.

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DATED AND FILED OCTOBER 9, 1997

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MISSOURI

Case No. 4:96-CV-1991-CAS

In re

HEN HOUSE INTERSTATE, INC.,

Debtor.

HARTFORD UNDERWRITERS
INSURANCE COMPANY,

Movant,

v.

MAGNA BANK, N.A.
f/k/a MAGNA BANK OF ILLINOIS, N.A.,

Respondent.

NOTICE OF APPEAL TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Magna Bank, N.A. f/k/a Magna Bank of Illinois, N.A., the respondent in the bankruptcy case below, hereby appeals to the United States Court of Appeals for the Eighth Circuit

from the final judgment of the United States District Court for the Eastern District of Missouri entered in this case on September 10, 1997, affirming an order entered by the United States Bankruptcy Court for the Eastern District of Missouri on August 14, 1996 granting movant Hartford Underwriters Insurance Company's Application for Allowance of Administrative Expense Pursuant to 11 U.S.C. § 503 and Charge Against Collateral Pursuant to 11 U.S.C. § 506(c).

The parties to the judgment appealed from and the names of their respective attorneys are as follows:

PARTY	ATTORNEYS
Magna Bank, N.A.	Robert H. Brownlee David D. Farrell THOMPSON COBURN One Mercantile Center, Suite 3400 St. Louis, Missouri 63101 (314) 552-6000 (314) 552-7000 (Fax)
The Hartford Underwriters Insurance Company	Wendi-Alper Pressman VINCENT D. VOGLER & ASSOCIATES 11330 Olive Street Road St. Louis, Missouri 63141 (314) 567-7970 (314) 567-5053 (Fax)

Respectfully submitted,

s/ Robert H. Brownlee
Robert H. Brownlee, 2726
David D. Farrell, 5048
THOMPSON COBURN
One Mercantile Center
St. Louis, Missouri 63101
(314) 552-6000
(314) 552-7000 (Fax)

ATTORNEYS FOR
APPELLANT/RESPONDENT
MAGNA BANK, N.A.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DATED AND FILED JULY 27, 1998

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 97-3859

In re: Hen House Interstate, Inc.,

Debtor.

Hartford Underwriters Insurance Company,

Movant – Appellee,

v.

Magna Bank, N.A., formerly known as Magna Bank of Illinois, N.A.,

Respondent – Appellant.

Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: May 12, 1998
Filed: July 27, 1998

Order Granting Rehearing Sept. 22, 1998.

Before BOWMAN, Chief Judge, HEANEY and HANSEN, Circuit Judges.

BOWMAN, Chief Judge.

Opinion Dated July 27, 1998

Hartford Underwriters Insurance Company brought an action pursuant to the Bankruptcy Code, *see* 11 U.S.C. §§ 503 and 506(c) (1994), against Magna Bank,[1] a secured creditor of Hen House Interstate, Inc. (hereinafter "Debtor"), the debtor in the underlying bankruptcy. Hartford sought the payment of workers' compensation insurance premiums that went unpaid by the Debtor during the period in which the Debtor attempted a Chapter 11 reorganization. The Bankruptcy Court[2] ordered the surcharge of Magna's collateral pursuant to § 506(c) to secure payment of the insurance premiums, and the District Court[3] affirmed. Magna appeals.

Magna contends that Hartford lacked standing to bring its claim under § 506(c), that Magna's collateral may not be surcharged on the basis that it agreed to the continuation of the Debtor's business, that the judgment constitutes an impermissible modification of the original financing order, and that the equities favor denying the surcharge of Magna's collateral. We affirm.

---

1. Magna Bank is the successor in interest to the rights, claims, and interests of Landmark Bank of Illinois. We refer to Magna herein notwithstanding that certain facts pertain to Landmark Bank prior to its acquisition by Magna.

2. The Honorable David P. McDonald, United States Bankruptcy Judge for the Eastern District of Missouri.

3. The Honorable Charles A. Shaw, United States District Judge for the Eastern District of Missouri.

I.

The Debtor owned and operated a number of businesses located throughout the Midwest, including restaurants, service stations, gift stores, and an outdoor advertising firm. On September 5, 1991, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. During the course of its Chapter 11 case, the Debtor remained in possession of its assets and continued to operate its businesses. Ultimately, the Debtor's efforts to reorganize were unsuccessful and, while still operating under Chapter 11, the Debtor liquidated its assets through a combination of going-concern sales and sales of its shut-down properties. Thereafter, in January 1993, the Debtor's Chapter 11 case was converted into a Chapter 7 liquidation proceeding.

At the time the Debtor initially filed for bankruptcy relief, it owed Magna approximately $4.1 million. As security for repayment of the debt, Magna had a security interest in essentially all of the Debtor's real and personal property. The day after the Debtor filed its Chapter 11 petition, Magna agreed to loan the Debtor $300,000 to help finance the Debtor's reorganization efforts. The Debtor moved for authorization of the post-petition loan. In its financing order, to which both Magna and the Debtor agreed, the Bankruptcy Court granted the motion authorizing the loan and, in addition, authorized the Debtor's use of cash collateral that was subject to Magna's security interest to pay expenses set forth in an attached budget. *See* Final Order para. 24, at 17. The budget provided for workers' compensation expenses in the amount of approximately $8,600 per month. Further, the financing order required that the Debtor "pay or cause

to be paid all ordinary and necessary expenses of operation . . . which are allowed in the Budget." Final Order para. 25, at 18. The financing order also contained a provision that "no expenses of administration of Debtor's Chapter 11 case . . . shall be charged against [Magna] or [its collateral] . . . pursuant to § 506(c) of the Bankruptcy Code . . . without the prior written consent of [Magna], and no such consent shall ever be implied." Final Order para. 33, at 24-25. After entry of the financing order, Magna disbursed the entire $300,000 to the Debtor.

During the period in which the Debtor attempted its Chapter 11 reorganization, Hartford provided workers' compensation insurance coverage. Under the terms of the policy, the Debtor was required to make monthly payments to Hartford. Despite the fact that the Debtor quit paying the monthly premiums, Hartford continued to provide coverage. At one point, the Debtor paid a portion of the amount due Hartford, but to date $51,871.40 remains in unpaid premiums for the period in which Hartford provided the coverage. Hartford filed for relief pursuant to 11 U.S.C. § 503 seeking the allowance of its claim as an administrative expense and 11 U.S.C. § 506(c) seeking to recover its claim by surcharging Magna's collateral.

II.

"As the second reviewing court, our standards are the same as the district court's; we review the bankruptcy court's findings of fact for clear error and its conclusions of law *de novo*." *Halverson v. Estate of Cameron (In re Mathiason)*, 16 F.3d 234, 235 (8th Cir. 1994). Magna first urges this Court

to reconsider and overrule our prior decision, *United States, Internal Revenue Service v. Boatmen's First National Bank of Kansas City*, 5 F.3d 1157, 1159 (8th Cir. 1993), wherein we held that third parties have standing to surcharge a secured creditor's collateral under § 506(c).[4] Section 506(c) provides, "The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." 11 U.S.C. § 506(c). In *Boatmen's*, we interpreted this provision to allow administrative claimants to assert their claims under § 506(c). As a three judge panel, we lack authority to reconsider *Boatmen's*, *see Smith v. Copeland*, 87 F.3d 265, 269 (8th Cir. 1996) ("Only the court en banc can overrule another panel's decision."), and therefore hold that Hartford had standing under § 506(c) to assert its administrative claim for unpaid workers' compensation insurance premiums.

Magna next contends that the Bankruptcy Court and the District Court erred in allowing Hartford to surcharge Magna's collateral under § 506(c). Generally, administrative expenses may not be charged against secured collateral but instead share in the distribution of the unsecured collateral pursuant to 11 U.S.C. § 503. *See Boatmen's*, 5 F.3d at 1159. Section 506(c) creates an exception to this general rule,

4. As a member of the panel, I dissented from the decision in *United States, Internal Revenue Service v. Boatmen's First National Bank of Kansas City*, 5 F.3d 1157 (8th Cir. 1993), because the plain language of 11 U.S.C. § 506(c) gives only the trustee standing to surcharge a secured creditor's collateral. *See id.* at 1161. I remain of that view today but recognize *Boatmen's* as controlling precedent in this Circuit.

providing that an expense may be surcharged against a secured creditor's collateral if the expenditure was necessary, reasonable, and directly benefited the secured creditor. *See Brookfield Prod. Credit Ass'n v. Borron*, 738 F.2d 951, 952 (8th Cir. 1984). In the alternative, a secured party's collateral may be surcharged where the secured party either directly or impliedly consented to the expense. *See Daniel v. AMCI, Inc. (In re Ferncrest Court Partners, Ltd.)*, 66 F.3d 778, 782 (6th Cir. 1995).

Magna does not dispute that workers' compensation insurance is a necessary and reasonable expense. Magna does contend, however, that the expense incurred by Hartford in providing workers' compensation insurance did not directly benefit Magna because the Debtor's reorganization efforts ultimately failed and the assets were liquidated. For support, Magna relies on the Bankruptcy Court's statement that "the continued operation of the business failed to improve [Magna's] recovery." Bankruptcy Ct. Mem. Op. at 9. The District Court, however, did not clarify whether it viewed Magna as having received a direct benefit. In any event, while we would be inclined to view Magna as having received a direct benefit, *see Boatmen's*, 5 F.3d at 1160 ("The 'benefit' . . . lies in the *ambition* of the creditor to preserve and improve its secured collateral and the *opportunity* to realize that ambition.") (emphasis added), we need not reach that holding today because we conclude that Magna consented to the workers' compensation insurance expenses.

We believe that the case at bar is in all material aspects similar to *Boatmen's*. In *Boatmen's*, a company that owned and operated a string of dry cleaning stores filed for Chapter

11 bankruptcy. A secured creditor, Boatmen's Bank, agreed to extend post-petition credit so that the debtor company could continue its operations. During the time in which the debtor operated under Chapter 11, its payroll taxes went unpaid. The Internal Revenue Service (IRS) filed an administrative claim pursuant to § 506(c) to recover the unpaid payroll taxes plus interest and penalties. We held that "when a secured creditor agrees to the preservation of the debtor business as a going concern and that preservation requires the payment of payroll taxes, any unpaid post-petition taxes may be charged to the secured collateral." *Boatmen's*, 5 F.3d at 1160.

We have essentially the same set of circumstances here. Magna agreed to the continued operation of the Debtor's businesses in the hopes of receiving a greater return through reorganization rather than through liquidation. Magna thereby "agreed to accept the expenses and risks associated with [the] anticipated benefit." *Id.* One such expense is workers' compensation insurance. Under Missouri law, an operating business is obligated to maintain workers' compensation insurance unless it can demonstrate that it has the ability to self-insure. *See* Mo. Rev. Stat. § 287.280 (Supp. 1998). Moreover, Magna expressly consented in the financing order to the provision authorizing the Debtor's use of its cash collateral for necessary operating expenses, which specifically included workers' compensation insurance premiums, and to the provision requiring that the Debtor pay or cause to be paid all necessary and ordinary expenses.

Magna attempts to distinguish in two ways the facts in *Boatmen's* from those in the present case. First, Magna points

to the fact that in *Boatmen's* the bank had signed an agreement to subordinate its post-petition liens to administrative expenses. Magna thus argues that Boatmen's expressly consented to the surcharge of its collateral for administrative expenses. Magna also points out that this Court in *Boatmen's* found that the bank had received an overall benefit from the debtor's efforts at reorganization. Magna therefore contends that there may have been other sufficient grounds upon which this Court could have allowed the IRS to surcharge Boatmen's collateral. The holding of *Boatmen's*, however, turns neither on Boatmen's agreement to subordinate its liens to administrative expenses nor on the receipt of any direct benefit by Boatmen's. Rather, the holding turns on Boatmen's agreement to the preservation of the debtor's business as a going concern. We find neither attempt to distinguish *Boatmen's* persuasive. Just as in *Boatmen's*, Magna agreed to the continued operation of the Debtor's businesses and therefore consented to the payment of workers' compensation insurance.

In further support of Magna's argument that it did not consent to the payment of workers' compensation insurance, Magna directs us to the provision contained in the financing order, which provides that "no expenses of administration of Debtor's Chapter 11 case . . . shall be charged against [Magna] or [its collateral] . . . pursuant to § 506(c) of the Bankruptcy Code . . . without the prior written consent of [Magna], and no such consent shall ever be implied." Final Order para. 33, at 24-25. This provision, however, does not affect our conclusion that Magna *did* consent to the use of its cash collateral for expenses associated with keeping the Debtor's businesses operating. Furthermore, we believe that

an agreement by a debtor and a secured creditor to prohibit the payment of § 506(c) administrative expenses from the secured creditor's collateral would operate as a windfall to the secured creditor at the expense of administrative claimants. We therefore conclude that such a provision is unenforceable. *See McAlpine v. Comerica Bank-Detroit (In re Brown Bros., Inc.)*, 136 B.R. 470, 474 (W.D. Mich. 1991) ("[A] provision [that attempts to immunize a secured creditor from surcharge payment obligations under § 506(c)] is not enforceable in light of the congressional mandate that a trustee have the authority to use a portion of secured collateral for its preservation or proper disposal."); *see also In re Willingham Invs., Inc.*, 203 B.R. 75, 79 (Bankr. M.D. Tenn. 1996).

Magna next asserts that the Bankruptcy Court's order constitutes an impermissible modification of the original financing order in violation of 11 U.S.C § 364(e), which provides:

> The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt . . . does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith . . . .

11 U.S.C. § 364(e). The purpose of § 364(e) is to encourage the extension of credit to debtors by permitting creditors to rely on a bankruptcy court's authorization of the transaction. *See Burchinal v. Central Washington Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1488 (9th Cir. 1987). Magna

argues that, because the financing order contained the provision against surcharging Magna's collateral without its consent, the decision by the Bankruptcy Court violates § 364(e). This argument fails, however, because we have concluded above that Magna consented to the payment of workers' compensation insurance premiums by agreeing to the continued operation of the Debtor's businesses. The Bankruptcy Court did not modify or reverse any provision contained in the financing order.

Finally, Magna argues that a surcharge of its collateral in this situation would be grossly inequitable. For support, Magna asserts that the payments already made to Hartford by the Debtor will cover any existing or future claims that may be asserted under the workers' compensation policy and that Hartford could have minimized its exposure by canceling the policy when the premiums first went unpaid. We find neither of these assertions compelling enough to justify a finding that the Bankruptcy Court abused its discretion.

III.

The order of the District Court, affirming the order of the Bankruptcy Court, is affirmed.

Opinion Dated July 27, 1998

HANSEN, Circuit Judge, concurring.

I concur in the court's opinion because, like Chief Judge Bowman, I must respect as controlling circuit precedent the panel decision in *United States, Internal Revenue Service v. Boatmen's First National Bank of Kansas City*, 5 F.3d 1157 (8th Cir. 1993). I agree with the Chief Judge's view first expressed his dissent in *Boatmen's* and reiterated today in footnote four of the court's opinion, that the plain language of 11 U.S.C. § 506(c) gives only a trustee standing to surcharge a creditor's collateral, but that is not the current law of this circuit, and only an en banc court can, and in my view, should, change it.

ORDER
Sept. 22, 1998

Appellant Magna Bank's suggestion for rehearing is granted. The court's opinion and judgment of July 27, 1998, are vacated. The grant of rehearing en banc is limited to the issue of standing.

The clerk is directed to set this case for oral argument at 10:00 a.m. on Thursday, October 22, 1998, in St. Paul, Minnesota. Each side will be granted twenty (20) minutes to present its oral argument.

The parties are directed to submit twenty-five (25) copies of the briefs previously filed in the appeal. These additional copies are due October 2, 1998.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DATED AND FILED JUNE 7, 1999

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 97-3859

In re: Hen House Interstate, Inc.,

Debtor.

Hartford Underwriters Insurance Company,

Movant – Appellee,

v.

Magna Bank, N.A., formerly known as Magna Bank of Illinois, N.A.,

Respondent – Appellant.

Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: October 22, 1998

Filed: June 7, 1999

Before BOWMAN,[1] Chief Judge, HEANEY, McMILLIAN, RICHARD S. ARNOLD, FAGG, WOLLMAN, BEAM,

---

1. The Honorable Pasco M. Bowman stepped down as Chief Judge of the United States Court of Appeals for the Eighth Circuit at the end of the day on April 23, 1999. He has been succeeded by the Honorable Roger L. Wollman.

Opinion Dated June 7, 1999

LOKEN, HANSEN, MORRIS SHEPPARD ARNOLD, and MURPHY, Circuit Judges, *en banc*.

BOWMAN, Chief Judge.

Magna Bank, N.A., appeals the judgment of the District Court affirming the judgment of the Bankruptcy Court in favor of Hartford Underwriters Insurance Company. The sole question presented for review by the Court en banc is the threshold question of whether Hartford has statutory standing to surcharge Magna's collateral under 11 U.S.C. § 506(c) (1994). We reverse.

I.

Magna[2] made various loans to Hen House Interstate, Inc. (Debtor), which owned and operated a number of restaurants, service stations, gift stores, and an outdoor advertising firm. To secure the loans, Magna took a security interest in essentially all of the Debtor's real and personal property. On September 5, 1991, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri. When the Debtor filed its petition, it was indebted to Magna in the amount of approximately $4.1 million. The Debtor retained possession of its assets and continued operation of its businesses after commencing the Chapter 11 proceedings.

---

2. Magna is the successor in interest to Landmark Bank of Illinois. We refer to Magna herein notwithstanding that some of the facts pertain to Landmark Bank prior to its acquisition by Magna, and notwithstanding that on October 9, 1998 Magna was absorbed by merger into Union Planters National Bank.

Opinion Dated June 7, 1999

The day after the Debtor filed its Chapter 11 petition, Magna agreed to lend the Debtor an additional $300,000 to help finance the Debtor's post-petition reorganization efforts. The Bankruptcy Court approved the loan agreement in its final financing order and authorized the Debtor to use the proceeds of the post-petition loan and the cash collateral that was subject to Magna's security interest to pay expenses set forth in an appended budget. The budget allowed for workers' compensation expenses in the amount of approximately $8600 per month. Upon approval of the loan agreement, Magna disbursed the entire $300,000 of loan proceeds to the Debtor.

Despite the additional financing provided under the post-petition loan agreement, the Debtor's attempts at reorganization failed. In January 1993, the Bankruptcy Court converted the Debtor's Chapter 11 case into a Chapter 7 liquidation proceeding and appointed a trustee of the Chapter 7 estate.

During the Debtor's attempted Chapter 11 reorganization, Hartford provided workers' compensation insurance coverage to the Debtor. The terms of the insurance policy required the Debtor to pay a premium to Hartford each month. The Debtor made an initial premium deposit and a subsequent premium payment, but otherwise failed to pay the monthly premium required by the policy. The unpaid premiums amount to $51,871.40.

When the Chapter 11 reorganization failed and the Debtor's case was converted to a Chapter 7 proceeding, Hartford brought an action pursuant to Bankruptcy Code § 503 seeking the allowance of its claim as an administrative

expense and Bankruptcy Code § 506(c) seeking to recover the unpaid premiums by surcharging Magna's collateral. The Bankruptcy Court, following the holding of a three-judge panel of our Court in *United States, Internal Revenue Service v. Boatmen's First National Bank*, 5 F.3d 1157, 1159 (8th Cir. 1993), that non-trustees have standing under § 506(c) to surcharge a secured creditor's collateral, determined that Hartford had standing to seek recovery pursuant to § 506(c) and ordered the surcharge of Magna's collateral. Magna appealed to the District Court claiming, *inter alia*, that § 506(c) did not accord Hartford standing to assert its claim. The District Court, also relying on *Boatmen's*, affirmed the judgment of the Bankruptcy Court, and Magna appealed to this Court.

A three-judge panel of this Court affirmed the judgment of the District Court, holding, among other things, that *Boatmen's* was controlling and that Hartford therefore had standing to seek recovery under § 506(c). But two members of the panel expressed their belief that *Boatmen's* had been wrongly decided and should be reconsidered by the Court en banc. *See Hartford Underwriters Ins. Co. v. Magna Bank, N.A. (In re Hen House Interstate, Inc.)*, 150 F.3d 868, 871 n.4 (8th Cir. 1998); *id.* at 873 (Hansen, J., concurring). We granted Magna's suggestion for rehearing en banc on the issue of Hartford's standing to seek recovery and vacated the panel opinion. We now overrule *Boatmen's* to the extent it construes § 506(c) to empower a non-trustee to surcharge an allowed secured creditor's collateral under that section and hold that Hartford, a non-trustee claimant, lacks standing to assert a § 506(c) claim.

II.

As the second reviewing court, we apply the same standard as that applied by the District Court; we review de novo the Bankruptcy Court's determination of the single issue of law presented here. *See Halverson v. Estate of Cameron (In re Mathiason)*, 16 F.3d 234, 235 (8th Cir. 1994).

Initially, we note that Hartford asserts no claim against Magna or its collateral outside of the Hen House bankruptcy proceeding. The nature and extent of the potential liability of Magna, as an allowed secured creditor in that bankruptcy proceeding, is established by the Bankruptcy Code; more particularly, it is established for purposes of this case by § 506(c). Despite arguments made by Hartford asserting its § 506(c) standing to surcharge property securing Magna's claim based on other provisions of the Bankruptcy Code, the fact is that § 506(c) is the only provision of the Code that directly addresses the issue of standing that is before us. Moreover, § 506(c) is the only provision of the Code that authorizes any party to a bankruptcy proceeding to recover from property securing the claim of an allowed secured creditor such as Magna. It would be extremely odd were Congress to have expanded the potential § 506(c) liability of allowed secured creditors by means of the other Code provisions put forward by Hartford, which in one way or another deal with the assertion of claims against the bankruptcy estate, as distinguished from claims against the property of allowed secured creditors.[3] We do not believe

3. The general rule is that administrative expenses cannot be charged against secured collateral and are chargeable against only the unsecured collateral of the estate pursuant to Bankruptcy Code (Cont'd)

Congress intended to do any such thing and, therefore, we focus on § 506(c).

Section 506(c) clearly states, "*The trustee* may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." 11 U.S.C. § 506(c) (1994) (emphasis added). The proper construction of any statute, the Bankruptcy Code included, begins with the language of the statute itself. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989) (construing Bankruptcy Code § 506(b) according to its plain

---

(Cont'd)
§ 503. *See* 11 U.S.C. § 503(a) (1994); *Precision Steel Shearing, Inc. v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 324 (3d Cir. 1995); *In re Swann*, 149 B.R. 137, 143 (Bankr. D.S.D. 1993). Therefore, Hartford, despite its argument to the contrary, may not seek to surcharge Magna's collateral under § 503 and may look only to § 506(c) for that purpose.

Hartford seeks standing under Bankruptcy Code § 1109(b) as well, *see* 11 U.S.C. § 1109(b) (1994) ("A party in interest, including . . . a creditor . . . may raise and may appear and be heard on any issue in a case under this chapter."), but § 1109(b) is not the correct avenue for recovery for the reason that § 1109(b) is inapplicable to the Chapter 7 proceeding which underlies this case. *See in re Taylor & Assocs., L.P.*, 191 B.R. 374, 381-82 n.5 (Bankr. E.D. Tenn. 1996) ("Section[ ] 1109 . . . [is] applicable exclusively to Chapter 11 cases and ha[s] no application to Chapter 7."); *cf. In re Polo Club Apartments Assocs. L.P.*, 150 B.R. 840, 856-57 (Bankr. N.D. Ga. 1993) (noting that subchapter I of Bankruptcy Code Chapter 11 applies only in cases Under Chapter 11, and does not apply to a case converted from Chapter 11 to Chapter 7).

language); *Harmon v. United States*, 101 F.3d 574, 583 (8th Cir. 1996). The natural reading of § 506(c) entitles only the trustee to seek to surcharge property securing the claim of an allowed secured creditor under that section.[4] When the language of the Bankruptcy Code is clear and unambiguous, "our sole function . . . is to enforce it according to its terms." *Rake v. Wade*, 508 U.S. 464, 471, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993) (internal quotations and citations omitted) (interpreting "unqualified terms" of Bankruptcy Code § 506(b)); *see also Patterson v. Shumate*, 504 U.S. 753, 761, 112 S.Ct. 2242, 119 L.Ed.2d 519 (1992) (stating clarity of § 541(e)(2) of Bankruptcy Code obviates need for inquiry beyond language of statute).

---

4. Hartford has made an issue of Bankruptcy Code § 1107(a), which provides that Chapter 11 debtors in possession shall, with some exceptions, have "all the rights . . . and powers, and shall perform all the functions and duties," of trustees. 11 U.S.C. § 1107(a) (1994). The express language of § 1107(a) therefore compels the unremarkable conclusion that Chapter 11 debtors in possession may do most of the things trustees may do. In this case, Hartford is neither a Chapter 11 debtor in possession nor a bankruptcy trustee.

Likewise, though Bankruptcy Code §§ 901, 902 and 1203 explicitly grant municipalities in Chapter 9 cases and family farmers in Chapter 12 cases some of the rights, powers, functions and duties of trustees serving in cases under Chapter 11, *see* 11 U.S.C. §§ 901(a), 902(5), 1203 (1994), this is not a Chapter 9 or 12 case and Hartford is not a municipality or a family farmer seeking to reorganize. That Congress chose to expressly grant the enumerated parties carefully circumscribed trustee status in limited circumstances demonstrates only that, had Congress intended a claimant such as Hartford to have § 506(c) standing in the present circumstance, it would have said so. Particularly appropriate here is the ancient canon stating that *expressio unius est exclusio alterius*.

Hartford correctly points out that our conclusion here is not the consensus of the circuits that have considered the issue. A majority of those circuits has held that § 506(c) grants standing to non-trustees to pursue surcharge claims under that section. *See Loudoun Leasing Dev. Co. v. Ford Motor Credit Co. (In re K & L Lakeland, Inc.)*, 128 F.3d 203, 206 (4th Cir. 1997) (listing cases). But each of the circuits arriving at a conclusion contrary to the one we reach today has done so by circumventing the plain language of the statute and resting its determination instead upon policy considerations and equitable concerns. *See In re Parque Forestal, Inc.*, 949 F.2d 504, 511-12 (1st Cir. 1991) ("[The] courts of appeals which have considered the question have permitted recovery by third parties who equitably come to stand in the trustee's shoes."); *Precision Steel Shearing, Inc. v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 325 (3d Cir. 1995) ("Although § 506(c) in terms refers only to recovery by the trustee, we . . . have held that administrative claimants other than trustees have standing to recover under § 506(c), particularly when no other party has an economic incentive to seek recovery on the claimant's behalf."); *New Orleans Pub. Serv., Inc. v. First Fed. Sav. & Loan Ass'n (In re Delta Towers, Ltd.)*, 924 F.2d 74, 76-77 (5th Cir. 1991) ("Despite the seemingly unambiguous language, courts have allowed a [non-trustee] claimant to use § 506(c) . . . ."); *North County Jeep & Renault, Inc. v. General Elec. Capital Corp. (In re Palomar Truck Corp.)*, 951 F.2d 229, 232 (9th Cir. 1991) ("No compelling policies are served by a restrictive reading of § 506(c) . . . ."), *cert. denied*, 506 U.S. 821, 113 S.Ct. 71, 121 L.Ed.2d 37 (1992). Policy considerations and equitable concerns, however, are impermissible bases for statutory interpretation when, as

here, the language of the statute is clear and unambiguous. *See BFP v. Resolution Trust Corp.*, 511 U.S. 531, 540, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994) (eschewing policy determinations for which the Bankruptcy Code gives no authority); *McCuskey v. Central Trailer Servs., Ltd.*, 37 F.3d 1329, 1332 (8th Cir. 1994) (declining trustee's invitation to turn to bankruptcy policy considerations to guide interpretation of plain language of Bankruptcy Code § 546(a)(1)). "[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, 108 S.Ct. 963, 99 L.Ed.2d 169 (1988). We therefore respectfully disagree with those circuits holding that § 506(c) grants non-trustees standing to seek recovery under that section.

More persuasive is the determination of the Court of Appeals for the Fourth Circuit that "[t]he language of § 506(c) is clear and unambiguous. It grants only trustees the authority to seek recovery of postpetition costs and expenses from the collateral of a secured creditor." *Ford Motor Credit Co. v. Reynolds & Reynolds Co. (In re JKJ Chevrolet, Inc.)*, 26 F.3d 481, 484 (4th Cir. 1994); *see also K & L Lakeland*, 128 F.3d at 206-07.

Moreover, although we base our holding on the plain language of § 506(c), we note that the position espoused by Hartford would undermine the carefully crafted equality-of-distribution scheme fundamental to the operation of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 58, 110 S.Ct. 2258, 110 L.Ed.2d 46 (1990) ("Equality of distribution among creditors is a central policy of the Bankruptcy Code."). Entirely consistent with this scheme is 506(c)'s

grant of standing to a bankruptcy trustee to recover administrative expenses from the property securing the claim of an allowed secured creditor, the proceeds of which recovery become a portion of the bankruptcy estate and are distributed pro rata among creditors according to their relative priorities. In contrast, the result of the position urged by Hartford would be that the administrative expenses recovered by a non-trustee claimant would not be incorporated into the bankruptcy estate or otherwise contributed to appropriate distribution of the debtor's property among its creditors. Such a result would be incompatible with the fundamental equal distribution goals of the Bankruptcy Code. In addition, as the Fourth Circuit suggested in *JKJ Chevrolet*, to allow non-trustee claimants (other than the debtor) to bring § 506(c) claims is to invite "a flood of satellite litigation by those seeking to avoid a pro rata division of the estate." 26 F.3d at 484 n.6 (citing *Boyd v. Dock's Corner Assocs. (In re Great N. Forest Prods., Inc.)*, 135 B.R. 46, 69 (Bankr. W.D. Mich. 1991)).

Finally, for the first time in this litigation Hartford asserts standing under Federal Rule of Bankruptcy Procedure 7071 to enforce the terms of the final financing order of the Bankruptcy Court. *See* Fed. R. Bankr. P. 7071 (incorporating Fed. R. Civ. P. 71) ("When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party . . . ."). The final financing order directs the Debtor to pay expenses out of cash collateral covered by Magna's security interest. *See In re Hen House Interstate, Inc.*, No. 91-45623-293, para. 24, at 17 (Final Order of Bankruptcy Court). Rule 7071, however, was not the basis of the claim

asserted by Hartford in its application to the Bankruptcy Court, in which Hartford sought to surcharge Magna's collateral pursuant to Bankruptcy Code § 506(c). Having stated only a § 506(c) surcharge claim in its complaint and throughout this litigation, Hartford cannot now, after the case has come to the rehearing en banc stage in this Court, embark upon a different claim never pleaded to the Bankruptcy Court and assert that any standing to bring that claim is a ground for standing in the § 506(c) claim it actually brought. That Hartford might or might not have standing to bring a Rule 7071 claim is beside the point, for that is a new claim that cannot initially be brought forward at the appellate level.[5]

---

5. Moreover, the Rule 7071 claim is not within the scope of our order granting "rehearing en banc . . . limited to the issue of standing." *Hartford Underwriters Ins. Co. v. Magna Bank, N.A. (In re Hen House Interstate, Inc.)*, No. 97-3859EMSL (8th Cir. Sept. 22, 1998) (Order Granting Rehearing En Banc). Although our order (the purpose of which, after all, was to limit rehearing to a single issue, not to invite new claims) refers generically to "the issue of standing," we could only have intended that phrase to mean the issue of § 506(c) standing. In its motion to file a supplemental brief after rehearing en banc had been granted, Hartford made no reference to Rule 7071. Instead, Hartford emphasized that "[t]he question of standing under section 506(c) is one of great importance to administrative claimants such as Hartford, and the Court's en banc resolution of this issue will affect many such claimants in innumerable bankruptcy cases." Appellee's Motion to File Supplemental Brief at 2-3 (Sept. 22, 1998). Likewise, Magna, in its suggestion for rehearing en banc, limited discussion to § 506(c). For these reasons, it strains credulity to think that our order granting rehearing en banc invited Hartford to assert a Rule 7071 claim at this late stage. We are thoroughly satisfied that our review is limited to the issue of Hartford's standing to bring a § 506(c) claim, the claim that Hartford in fact asserted.

We therefore do not reach the issue of Hartford's standing to bring a Rule 7071 claim. *Cf. Stupak-Thrali v. United States*, 89 F.3d 1269, 1275 n.4 (6th Cir. 1996) (declining to hear issue urged for first time to panel in reply brief and reasserted in supplementary brief to court en banc; otherwise party raising argument on en banc rehearing would "be allowed to deprive the panel of the ability to address the issue first"), *cert. denied*, 519 U.S. 1090, 117 S.Ct. 764, 136 L.Ed.2d 711 (1997); *Anderson v. Beatrice Foods Co.*, 900 F.2d 388, 397 (1st Cir.) (order denying rehearing) (holding party who failed to assert argument in district court, and in supplemental briefing and oral argument before panel, "cannot be permitted to raise a new issue for the first time on petition for rehearing in the court of appeals"), *cert. denied*, 498 U.S. 891, 111 S.Ct. 233, 112 L.Ed.2d 193 (1990).

The single issue for determination by this Court en banc remains the issue stated at the outset: whether Hartford has standing under § 506(c). We hold that § 506(c) permits only the trustee to proceed under that section. Hartford therefore lacks standing to surcharge Magna's collateral under § 506(c).

III.

United States, Internal Revenue Service v. Boatmen's First National Bank, 5 F.3d 1157 (8th Cir. 1993), which held that parties other than the trustee have standing to surcharge property securing the claim of an allowed secured creditor under § 506(c), is overruled. The decision of the District Court is reversed. The case is remanded to the District Court with instructions that the Bankruptcy Court be directed to vacate its judgment and dismiss Hartford's § 506(c) claim for lack of standing.

HEANEY, Circuit Judge, dissenting, with whom MCMILLIAN, RICHARD S. ARNOLD, BEAM, and MURPHY, Circuit Judges, join.

Today this court rejects the view of four other circuits, ignores the teaching of the leading bankruptcy treatise, and departs from the well-established view that administrative claimants have § 506(c) standing to enforce administrative claims against secured creditors who have benefitted by the goods or services provided by an administrative claimant. Because the prudential standing doctrine requires this court to confer § 506(c) standing to Hartford, I respectfully dissent.

An administrative expense may be surcharged against a secured creditor's collateral if the expense was necessary, reasonable, and directly benefitted the secured creditor, *Brookfield Prod. Credit Ass'n v. Borron*, 738 F.2d 951, 952-53 (8th Cir. 1984), or if a secured party either directly or impliedly consented to the expense, *Daniel v. AMCI, Inc. (In re Ferncrest Court Partners)*, 66 F.3d 778, 782 (6th Cir. 1995). The original panel opinion stated that

> Magna agreed to the continued operation of the Debtor's businesses in the hopes of receiving a greater return through reorganization rather than through liquidation. Magna thereby "agreed to accept the expenses and risks associated with [the] anticipated benefit." One such expense is workers' compensation insurance. Under Missouri law, an operating business is obligated to maintain workers' compensation insurance unless it can demonstrate that it has the ability to self-insure. See Mo. Rev. Stat. § 287, 280 (Supp. 1998).

Hartford Underwriters Ins. Co. v. Magna Bank (In re: Hen House Interstate, Inc.), 150 F.3d 868, 872 (8th Cir. 1998) (quoting *IRS v. Boatmen's First National Bank*, 5 F.3d 1157, 1160 (8th Cir. 1993)). The original panel further held that "Magna consented to the workers' compensation insurance expenses," and proceeded to the issue of standing. *Hartford*, 150 F.3d at 871. The panel concluded that Hartford had standing under *Boatmen's*. *See id.* at 871. This court granted Hartford's petition for rehearing solely on the issue of standing.

I agree with the court that the sole issue before us is whether Hartford has standing to surcharge Magna's collateral. I believe it has. Four circuits have adopted this view, *See e.g. North County Jeep & Renault, Inc. v. General Elec. Capital Corp. (In re Palomar Truck Corp.)*, 951 F.2d 229, 232 (9th Cir. 1991), *cert. denied*, 506 U.S. 821, 113 S.Ct. 71, 121 L.Ed.2d 37 (1992); *In re Parque Forestal, Inc.*, 949 F.2d 504, 511 (1st Cir. 1991); *New Orleans Pub. Serv., Inc. v. First Fed. Sav. & Loan Ass'n (In re Delta Towers, Ltd.)*, 924 F.2d 74, 77 (5th Cir. 1991); *Equitable Gas Co. v. Equibank N.A. (In re McKeesport Steel Castings Co.)*, 799 F.2d 91, 94 (3d Cir. 1986). The court's view is also supported by the leading scholarly work on bankruptcy:

> The reasoning behind the approach which extends standing to creditors and other claimants is that a secured creditor who received a direct benefit from the rendition of services or provision of goods by an administrative claimant . . . should have the collateral charged for that benefit, regardless of whether the proceeds of the charge are paid to the trustee in reimbursement for the trustee's prior payment to the claimant, or are paid to the claimant directly. Otherwise, if the trustee does not have available funds to pay the claimant, the trustee has no economic incentive to seek a recovery under section 506(c) with respect to amounts that will be paid over to the claimant. As a result, the secured creditor may obtain a windfall at the expense of the unpaid claimant.

4 Collier on Bankruptcy ¶ 506.05[8] at 506-142-43 (Lawrence P. King ed., 15th ed. 1998). The majority view has been in effect since 1986, and I believe that Congress has acquiesced to the majority's resolution of the conflict. *See Johnson v. Transportation Agency*, 480 U.S. 616, 629 n.7, 107 S.Ct. 1442, 94 L.Ed.2d 615 (1987).

Had Congress intended to limit § 506(c) standing to trustees, it could have included the word "only" in the statute. Because it failed to do so and because Congress did not expressly deny § 506(c) standing to administrative claimants, the prudential standing doctrine dictates that this court confer § 506(c) standing on Hartford.

Any determination of standing "involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). In addition to the threshold requirements of Article III, the applicable prudential standing requirement is "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute." *Data Processing Serv. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). While Congress

can limit standing beyond that allowed by Article III of the United States Constitution, "[w]here statutes are concerned, the trend is toward enlargement of the class of people who may protest . . . ." *Id.* at 154, 90 S.Ct. 827. While *Data Processing* applied the zone-of-interests test to suits under the Administrative Procedure Act, the Supreme Court has since listed it among the other generally applicable prudential standing requirements. *See Bennett v. Spear*, 520 U.S. 154, 162, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997). Where Congress has neither expressly allowed nor denied administrative claimants § 506(c) standing, the Supreme Court has held that "Congress legislates against the background of our prudential standing doctrine, which applies *unless it is expressly negated*." *Id.* at 163, 117 S.Ct. 1154 (emphasis added); *see also Data Processing*, 397 U.S. at 154, 90 S.Ct. 827 ("Congress can, of course, resolve the question one way or another, save as the requirements of Article III dictate otherwise").

There can be no doubt that Hartford has Article III standing, and because Congress has not expressly negated the prudential standing doctrine in § 506(e), Hartford also has § 506(c) standing. To satisfy Article III standing, a plaintiff must allege that (1) he or she suffered or imminently will suffer an injury in fact; (2) the injury is fairly traceable to the defendant's conduct; and (3) a favorable court decision is likely to redress the injury. *See Florida Gen. Contractors v. Jacksonville*, 508 U.S. 656, 663-64, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993) (citations omitted). Here, Hartford provided statutorily-required workers' compensation insurance and was not paid. Magna consented to the court-authorized expenditures and benefitted from them in two

ways. First, Magna benefitted from the heightened possibility it would recoup the full value of its security interest. Second, it benefitted insofar as liquidating the various businesses as going concerns optimized its profit from liquidation. Finally, a favorable decision to Hartford would undoubtedly redress its injury.

Having satisfied the general requirements for Article III standing, "the applicable prudential standing requirement [is] 'whether the interest sought to be protected by [Hartford] is *arguably* within the zone of interests to be protected or regulated by the statute.' " *Bennett*, 520 U.S. at 162, 117 S.Ct. 1154 (citing *Data Processing*, 393 U.S. at 153, 90 S.Ct. 827) (emphasis added). "The [zone-of-interests] test is not meant to be especially demanding; in particular, there need be no indication of congressional purpose to benefit the would-be plaintiff." *Clarke v. Securities Indus. Ass'n*, 479 U.S. 388, 399-400, 107 S.Ct. 750, 93 L.Ed.2d 757 (1987) (footnote omitted). Section 506(c) provides that "[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim. 11 U.S.C. § 506(c). Here, it is clear that Hartford's claim was reasonable and necessary. Indeed, the continuance of workers' compensation insurance was mandated by law if Hen House was to continue in business. Additionally, the expenditures benefitted Magna as discussed above. Finally, Hartford's § 506(c) standing is consistent with other provisions of the Bankruptcy Code. *See, e.g.*, 11 U.S.C. §§ 503(a), 1109(b).

The court joins the Fourth Circuit[6] in its assertion that conferring § 506(c) standing to administrative claimants circumvents the Bankruptcy Code's distribution scheme:

> Allowing a claimant to proceed directly against a secured creditor would circumvent this distribution scheme, potentially causing an inequitable division of the estate. For example, if an estate has no unencumbered assets, an administrative claimant recovering directly from a secured creditor might receive full reimbursement while other administrative claimants, whose services were also necessary to the preservation of the estate, would receive nothing. An administrative claimant proceeding against a secured creditor in effect would be granted priority over the other claimants in its same class. We are of the opinion that if Congress had intended to alter so fundamentally the structure and principles underlying bankruptcy proceedings, it would have done so expressly.

Ford Motor Credit Co. v. Reynolds & Reynolds Co. (In re JKJ Chevrolet, Inc.), 26 F.3d 481, 484 (4th Cir. 1994). (footnotes and citations omitted). In my view, Congress

6. While the court relies heavily on the reasoning of the Fourth Circuit, even that court has recognized the fact that a secured creditor should not be able to immunize its windfall under the theory that administrative claimants lack § 506(c) standing. *See Ford Motor Credit Co. v. Reynolds & Reynolds Co. (In re JKJ Chevrolet, Inc.)*, 26 F.3d 481, 485 n.7 (4th Cir. 1994) (recognizing the possibility that "a bankruptcy court could grant derivative standing to a claimant . . . to prosecute a § 506(c) action.").

expressly altered the distribution scheme when it enacted § 506(c). As noted in our *Boatmen's* opinion, administrative expenses are generally paid from the unencumbered assets of the bankruptcy estate rather than secured collateral. *See* 5 F.3d at 1159; *see also In re JKJ Chevrolet, Inc.*, 26 F.3d at 483 (recognizing general rule). Section 506(c) clearly alters the general rule by requiring secured creditors to pay administrative expenses when, *inter alia*, the expenditures benefit the secured creditor. Thus, the obligation created by § 506(c), not the identity of the party enforcing that obligation, alters the distribution scheme.

The court departs from its view that it will not entertain equitable considerations and joins the Fourth Circuit in its argument that conferring § 506(c) standing to administrative claimants will lead to inequitable division of bankruptcy estates because particular administrative claimants may be compensated while other administrative claimants, unsecured creditors, or even secured creditors could go unpaid. Even if this were true, this is a criticism of the obligation created by § 506(c), not of allowing a particular party to enforce that obligation. Congress, not the courts, codified an equitable mechanism in § 506(c) by which a secured creditor may be compelled to reimburse the administrative expenses that preserve or dispose of the secured property to the extent that those expenditures have increased the property's value.

Finally, I believe that Hartford's claim that Federal Rule of Bankruptcy Procedure 7071 provides an independent basis for recovery may properly be considered by this court. The court argues that because Hartford did not raise this claim before the original panel in this case and raised it in the first

instance before this court en banc, we should not consider the claim. In my view, Hartford may be excused from failing to raise the claim before the original panel because the facts of this case fall squarely within the law established in our *Boatmen's* opinion; and as Chief Judge Bowman correctly noted in our original panel opinion, " '[o]nly the court en banc can overrule another panel's decision.' " *Hartford*, 150 F.3d at 871 (quoting *Smith v. Copeland*, 87 F.3d 265, 269 (8th Cir. 1996)). Because we are writing on a clean slate as a court en banc, we may certainly entertain Hartford's claim now.

Federal Rule of Bankruptcy Procedure 7071 incorporates Rule 71 of the Federal Rules of Civil Procedure, which provides: "When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if he were a party . . . ." Fed. R. Civ. P. 71. Hartford argues that the bankruptcy court, with Magna's express consent, directed the debtor to pay the premiums for the workers' compensation insurance that Hartford provided. Because it was the intended beneficiary of the order, Hartford argues that it may recover from Magna under Rule 7071. In the interests of judicial economy, I would hold that, even if Hartford does not have standing under § 506(c), it should recover under Rule 7071.

Today this court overrules six years of Eighth Circuit law, rejects the views of four other circuits, and ignores the teaching of the leading bankruptcy treatise. It does this in disregard of the prudential standing doctrine. For the reasons stated above, I respectfully dissent.

RELEVANT STATUTES

11 U.S.C. § 502

§ 502. Allowance of claims or interests.

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that —

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds —

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of —

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds —

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of —

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief

or such later time as the Federal Rules of Bankruptcy Procedure may provide.

(c) There shall be estimated for purpose of allowance under this section —

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured, the claim of a creditor, to the extent that —

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the

debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and

allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

* * *

11 U.S.C. § 503

§ 503. Allowance of administrative expenses.

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including —

(1)(A) the actual, necessary costs and expenses of its preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case:

(B) any tax —

(i) incurred by the estate, except a tax of a kind specified in section 507(a)(8) of this title; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case; and

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph;

(2) compensation and reimbursement awarded under section 330(a) of this title;

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by —

(A) a creditor that files a petition under section 303 of this title;

(B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;

(C) a creditor in connection with the prosecution of a criminal offense

relating to the case or to the business or property of the debtor;

(D) a creditor, an indenture trustee, an equity security holder, or committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian; or

(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title; and

(6) the fees and mileage payable under chapter 119 of title 28.

* * *

11 U.S.C. § 506

§ 506. Determination of secured status.

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void unless —

(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

* * *

11 U.S.C. § 507

§ 507. Priorities.

(a) The following expenses and claims have priority in the following order:

Relevant Statutes

(1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

(2) Second, unsecured claims allowed under section 502(f) of this title.

(3) Third, allowed unsecured claims, but only to the extent of $4,300 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for —

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor;

Relevant Statutes

(4) Fourth, allowed unsecured claims for contributions to an employee benefit plan —

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of —

(i) the number of employees covered by each such plan multiplied by $4,300; less

(ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

(5) Fifth, allowed unsecured claims of persons —

(A) engaged in the production or raising of grain, as defined in section 557(b) of this title, against a debtor who owns or operates a grain storage facility,

as defined in section 557(b) of this title, for grain or the proceeds of grain, or

(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility

— but only to the extent of $4,300 for each such individual.

(6) Sixth, allowed unsecured claims of individuals, to the extent of $1,950 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt —

(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for —

(A) a tax on or measured by income or gross receipts —

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment

was pending, before the date of the filing of the petition; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax assessed before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (3) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on —

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise —

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date

of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

(9) Ninth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency), to maintain the capital of an insured depository institution.

(b) If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(1) of this section arising from

the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

* * *

11 U.S.C. § 1109

§ 1109. Right to be heard.

(a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.

(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders'

committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

* * * *